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United States Senate

COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS

WASHINGTON, DC 20510-8175

RETINA POIRIER, MAJORITY STAFF DIRECTOR
RUTH VAN MARK, MINORITY STAFF DIRECTOR

January 20, 2011

The Honorable Lisa Jackson
Administrator
U.S. Environmental Protection Agency
Ariel Rios Building
1200 Pennsylvania Avenue, N.W.
Washington, DC 20460

Dear Administrator Jackson:

On December 8, 2011, EPA released the draft report on Region 8's two year investigation of groundwater near Pavillion, Wyoming. This draft report contains preliminary findings that have given rise to tremendous controversy as this is the first time a federal agency has inferred that hydraulic fracturing is the likely cause of groundwater contamination.

EPA has indicated that it is prepared to move forward with a peer review of the draft report, despite the many concerns raised regarding the inadequacy of the quantity and quality of data and the delay in developing additional information. We ask that the agency fully address the problems that have been identified by the State of Wyoming and others, including data gaps and the timing and process of all evaluations, reviews, and conclusions prior to initiating the peer review process. Because of the significance of this report, and the potential impacts on regulatory decision making, other EPA assessments, and a large sector of the economy, it is critical that adequate and appropriate samples and data are collected and carefully reviewed before any final reviews or actions are taken. Furthermore, it is imperative that any analysis be based on the complete and best available science.

As EPA proceeds, we ask that this investigation be considered a highly influential scientific assessment and that any related, generated report is subject to the most rigorous, independent, and thorough external peer review process.

OMB's "Final Information Quality Bulletin for Peer Review" states that a scientific assessment is considered "highly influential" if the agency or the OIRA Administrator determines that the dissemination could have a potential impact of more than \$500 million in any one year on either the public or private sector or that the dissemination is novel, controversial, or precedent-setting, or has significant interagency interest.¹ The information generated in this investigation satisfies all these requirements.

¹ <http://www.whitehouse.gov/sites/default/files/omb/assets/omb/memoranda/fy2005/m05-03.pdf>

First, the potential economic impact of this investigation is certainly more than the \$500 million threshold. Natural gas development is estimated to contribute hundreds of billions of dollars to the United States economy, and hydraulic fracturing is estimated to be used in almost 90% of gas wells drilled today.² Any assessment linking hydraulic fracturing with drinking water contamination will have a clear economic impact on the natural gas development industry, natural gas users, and other economic sectors. Additionally, given the extensive media involvement initiated by EPA, it appears that the methods developed in the report could form the basis for national testing and monitoring and result in compliance requirements for virtually every well.

Also, this information is not only novel, but also controversial, as well as precedent setting. The draft report's supposition that the groundwater contamination contains compounds associated with gas production, including hydraulic fracturing, is the first time that a federal agency has posed a connection between hydraulic fracturing and groundwater contamination. In addition, the draft report has generated a tremendous amount of controversy among those in favor of and against natural gas development, and its testing methodologies and the quantity of data collected have been called into question by Wyoming state officials, industry experts, and others.³ Moreover, as a part of its hydraulic fracturing study, EPA is currently conducting separate investigations of five retroactive sites where complaints of groundwater contamination are believed to be caused by hydraulic fracturing, which we view as precedent setting.

Finally, this investigation will have significant interagency interest. The Department of Energy⁴ and the Department of Interior⁵ are both engaged in the study and potential regulation of hydraulic fracturing. In addition, agencies like the Centers for Disease Control and Prevention⁶ and the U.S. Securities and Exchange Commission⁷ have expressed interest in further study of hydraulic fracturing or disclosure.

Any peer review for this investigation, therefore, should be external, independent, rigorous, and thorough. The OMB peer review bulletin applies stringent peer review requirements to highly influential scientific assessments. The Agency "must ensure that the peer review process is transparent by making available to the public the written charge to the peer reviewers, the peer reviewers' names, the peer reviewers' report(s), and the agency's response to the peer reviewers' report(s)... This Bulletin requires agencies to adopt or adapt the committee selection policies employed by the National Academy of Sciences (NAS)."⁸ EPA's own peer review policy states that for highly influential scientific assessments, external peer review is the expected procedure, and for influential scientific assessments, external peer review is the approach of choice.⁹

² <http://www.prnewswire.com/news-releases/anga-statement-on-the-ihs-shale-gas-economic-study-135202123.html>

³ http://trib.com/news/state-and-regional/epa-report-pavillion-water-samples-improperly-tested/article_99512cf4-6d23-5c9b-9038-c676eadd33c2.html

⁴ <http://www.shalegas.energy.gov/>

⁵ <http://www.doi.gov/news/doinews/Forum-on-Natural-Gas-Hydraulic-Fracturing-on-Public-Lands.cfm>

⁶ <http://fuelfix.com/blog/2012/01/05/cdc-scientist-tests-needed-on-gas-drilling-impact/>

⁷ <http://online.wsj.com/article/SB10001424053111904009304576528484179638702.html>

⁸ <http://www.whitehouse.gov/sites/default/files/omb/assets/omb/memoranda/fy2005/m05-03.pdf>

⁹ http://www.epa.gov/peerreview/pdfs/peer_review_policy_and_memo.pdf

Thank you for your attention to this matter. We look forward to EPA continuing this investigation in close coordination with the State of Wyoming, while using the highest scientific standards, following the OMB memoranda on information quality and peer review, and ensuring that complete data is subject to an external, rigorous, and independent peer review process.

Sincerely,

James W. Clough

Mike Cryer

John Cunniff

John Dorman

Pat Hines

Tom Cook

Lee Neubauer

Louise Winters

Mike

Jeff Jensen

Mike Johnson



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

APR 13 2012

OFFICE OF
RESEARCH AND DEVELOPMENT

The Honorable Marco Rubio
United States Senate
Washington, DC 20510

Dear Senator Rubio:

Thank you for your letter of January 20, 2012, to Lisa P. Jackson, Administrator of the U.S. Environmental Protection Agency, concerning the Agency's investigation of ground water contamination in Pavillion, Wyoming. Specifically, you raised concerns about the data used as a basis for the conclusions in the draft report, and asked that the investigation be considered a Highly Influential Scientific Assessment (HISA). Your letter was referred to me because of the Office of Research and Development's role in conducting the investigation with EPA Region 8 and in arranging the peer review.

Data quantity and quality issues. You expressed concerns about the quantity and quality of data, and suggested that additional data should be collected and reviewed before any final reviews or actions are taken. The EPA stands behind the quality and reliability of our data. Extensive data have been collected and analyzed since the investigation began in 2009. Much of this information was shared with the State of Wyoming, the Tribes, Encana, and other interested parties before the draft report was released, and all of the laboratory and field data are publicly available on the EPA website.¹

The Agency agrees that it would be beneficial to conduct additional sampling of the wells along with other studies to fill data gaps. On March 8, 2012, Wyoming Governor Mead, the Northern Arapaho and Eastern Shoshone Tribes, and EPA Administrator Jackson issued a joint statement indicating that the Agency will partner with the State and the U.S. Geological Survey (USGS), in collaboration with the Tribes, to conduct another round of sampling of the EPA's deep monitoring wells in the Pavillion area. The EPA also plans to resample the domestic wells in closest proximity to the monitoring wells. To ensure that the results of the additional testing are available for the peer review process, the EPA is delaying the meeting of the peer review panel until the new data from USGS and the EPA are publicly available. In addition, the EPA is extending the public comment period on the draft report through October 2012.

Peer review and classification of the draft report. Regarding the peer review and the classification of this investigation, the EPA has been clear from the outset that the peer review of the draft report will be conducted in a scientifically rigorous manner by an independent group of experts. The EPA has classified the draft report as "Influential Scientific Information" (ISI). According to the Office of Management and Budget (OMB), ISI is defined as "scientific information the agency reasonably can determine will have or does have a clear and substantial impact on important public policies or private

¹ <http://www.epa.gov/region8/superfund/wy/pavillion/>

sector decisions." The EPA Peer Review Handbook describes ISI as having characteristics such as establishing a significant precedent, addressing a significant controversial issue, focusing on significant emerging issues, or having significant interagency implications. The draft EPA report clearly meets these and other ISI criteria. The EPA has determined that because the Pavillion investigation is a single study with the characteristics of ISI, rather than a broader assessment that involves an evaluation of a body of scientific or technical knowledge (as defined by OMB), it is best characterized as ISI.

However, in recognition of the high profile of this investigation, the Agency is treating the draft report as if it is a HISA for the purpose of peer review. The Agency will convene a balanced and independent panel of reviewers with the appropriate disciplinary expertise. Candidate reviewers will be carefully screened to avoid the selection of individuals with a real or perceived conflict of interest. In the spirit of transparency, the public has been invited to nominate reviewers and submit written comments on the draft report. The public will also be able to attend a public meeting where oral presentations on scientific issues can be made to the peer reviewers. By providing an opportunity for the public to offer comments on the draft charge to the reviewers, the EPA has gone one step beyond the HISA requirement of simply making the final peer review charge publicly available.

In closing, I would like to emphasize that the EPA has used a scientifically sound investigative approach in responding to the concerns expressed by homeowners in the Pavillion area about possible contamination of their wells. We have taken great care in analyzing the data and reaching the conclusions presented in the draft report. Transparency has been a hallmark of our efforts since the earliest stages of the investigation, and we will continue to operate in a transparent manner through the peer review and in any additional work that may be undertaken in Pavillion. Finally, we fully recognize the value of a rigorous and independent peer review, and we are implementing such a process. The EPA is committed to upholding the public trust by ensuring that the final report meets the expected standards of the scientific and technical community.

Again, thank you for your letter. If you have any further questions, please contact me or your staff may contact Pamela Janifer in the EPA's Office of Congressional and Intergovernmental Relations at 202-564-6969.

Sincerely,



Lek Kadell

Acting Assistant Administrator

12-000-9172

MAX BAILEY, IOWA
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ETTU SPENCER, ALABAMA
MIKE CRAPO, IDAHO
JAMES ALEXANDER, TENNESSEE
MIKE JOHANNIS, NEBRASKA
JOHN PUGHMAN, ARKANSAS

United States Senate

COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS

WASHINGTON, DC 20510-6175

REBECCA ROBBIE, MAJORITY STAFF DIRECTOR
BETH VAN MARK, MINORITY STAFF DIRECTOR

May 24, 2012

The Honorable Lisa Jackson
Administrator
U.S. Environmental Protection Agency
Ariel Rios Building
1200 Pennsylvania Avenue, NW
Washington, DC 20460

Dear Administrator Jackson:

We are deeply concerned by remarks made recently by a senior Environmental Protection Agency (EPA) official regarding enforcement practices in light of the Supreme Court's recent ruling in *Sackett v. EPA* ("*Sackett*"). In its May 7, 2012, edition, *Inside EPA* reported:

A top EPA official is downplaying the impact of the unanimous High Court ruling that opens up Clean Water Act (CWA) compliance orders to pre-enforcement judicial review, saying it will have little effect on how the agency enforces the water law, while floating several options it is considering for new documents that may be exempt from review. "What's available after *Sackett*? Pretty much everything that was available before *Sackett*," Mark Pollins, director of EPA's water enforcement division, said. [. . .] "Internally, it's same old, same old."

Additionally, a BNA article from May 4, 2012, "EPA Official Sees No Major Shift In Agency's Use of Compliance Orders," also recounted Mr. Pollins' remarks downplaying the Supreme Court's decision in *Sackett*. It is very troubling that an EPA official with water enforcement responsibilities would believe that the Supreme Court's decision in *Sackett* has little effect on how the agency enforces the Clean Water Act.

As you know, in *Sackett v. EPA*, the Supreme Court held that EPA compliance orders are subject to pre-enforcement review by the federal courts. Compliance orders often declare that the recipient is in violation of law and threaten thousands, or even millions, of dollars in fines for the initial violations followed by thousands or millions of dollars in additional fines for not complying with the "compliance order" itself. Thus, EPA's refusal to agree to such review in the first place left the *Sackett* family, as it has done to many other Americans, in a state of legal limbo—at risk of substantial civil or criminal penalties if they proceeded with development of their private property but without the ability to seek a court order to determine whether EPA was acting in accordance with the Clean Water Act.

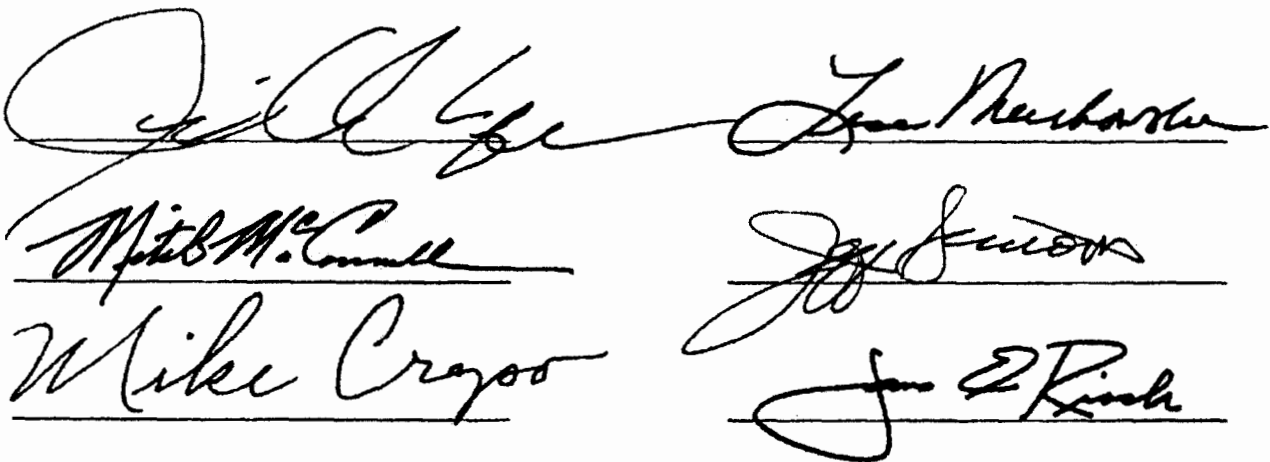
Indeed, the *Sacketts* faced a terrible choice: Give into EPA's overreaching involvement by foregoing the reasonable use of their private property, or force EPA's hand by proceeding with

development of their property at the risk of bankruptcy or imprisonment. EPA afforded them no opportunity to seek a neutral arbiter's evaluation of EPA's assertion of jurisdiction. No American should be faced with that choice. In fact, the Supreme Court's 9-0 ruling strongly demonstrates the absurdity of EPA's position in this case. Regrettably, we do not believe this is an isolated case with "little effect" on EPA's practices. To the contrary, as the *Wall Street Journal* explained in a March 22, 2012 editorial, "The ordeal of the Sacketts shows once again how [EPA] with a \$10 billion budget and 17,000 agents has become a regulatory tyranny for millions of law-abiding Americans." The Congressional Research Service recently found that EPA issues over 1,000 administrative compliance orders annually, which provides ample reason to question how *Sackett* will impact the agency's approach to CWA enforcement.¹

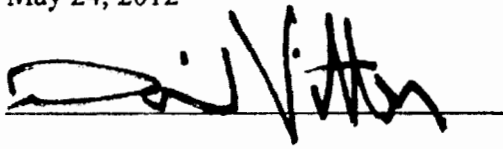
The Court's decision points toward a broader concern: EPA should not use its enforcement authority to intimidate citizens into compliance. As Justice Scalia noted in the majority opinion, "There is no reason to think that the Clean Water Act was uniquely designed to enable the strong-arming of regulated parties into voluntary compliance without judicial review." Nevertheless, as evidenced by these comments made by Mr. Pollins, it seems that EPA plans to continue business as usual and sees no need to change their use of compliance orders in response to the Court's holding. In order to help us understand the steps the EPA is taking following the *Sackett* decision, we request you clarify the comments made by Mr. Pollins and explain how the agency's enforcement office plans to proceed in pursuing CWA enforcement in light of *Sackett*.

Thank you for your prompt attention to this matter.

Sincerely,



¹ CRS Report, *The Supreme Court Allows Pre-enforcement Review of Clean Water Act Section 404 Compliance Orders: Sackett v. EPA* (March 26, 2012).


Dan Vitter

Lamar Alexander

John Boozman

Dean Heller

John Hironaka

John Barrasso

Mike Johanns

Mike Lee

Rand Paul

Mike R. Lee



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

JUL 10 2012

The Honorable James M. Inhofe
Ranking Member
Committee on Environment and Public Works
United States Senate
Washington, D.C. 20510

ASSISTANT ADMINISTRATOR
FOR ENFORCEMENT AND
COMPLIANCE ASSURANCE

Dear Senator Inhofe:

Thank you for your May 24, 2012 letter to Administrator Lisa Jackson regarding the United States Environmental Protection Agency's (the EPA) plans to enforce Clean Water Act (CWA) requirements in light of the Supreme Court's decision in *Sackett v. EPA* which held that CWA section 309(a) administrative compliance orders are now subject to pre-enforcement review by the federal courts. I appreciate the opportunity to discuss the EPA's enforcement program.


The EPA will, of course, fully comply with the Supreme Court's decision as we work to protect clean water for our families and future generations by using the tools provided by Congress to enforce the CWA. The Supreme Court's decision marked a significant change in the law concerning the reviewability of Section 309(a) administrative compliance orders. Prior to the Supreme Court's decision, all five federal circuit courts to consider the question had held that Section 309(a) administrative compliance orders were not subject to pre-enforcement review. We are taking all necessary steps to ensure that compliance orders issued by the agency comply with the Court's mandate. The EPA has directed all enforcement staff to ensure that the regulated community is fully aware of the right to challenge a Section 309(a) administrative compliance order and to include language explicitly informing respondents of this right with any unilateral Section 309(a) administrative compliance order issued by the agency. Attached is a memorandum from Pamela J. Mazakas, Acting Director of the Office of Civil Enforcement, to the regions highlighting the importance of the *Sackett* decision and informing them of the consequent changes to the CWA enforcement program.

In your letter, you express concern about remarks made by an EPA enforcement official at the *ALI ABA Wetlands Law and Regulation Seminar* on May 3, 2012, as reported by the publications *Inside EPA* and *BNA*. Both articles focused solely on a single statement by the EPA official and implied that the *Sackett* decision has not changed the EPA's approach to enforcement of the CWA. However, this single statement taken out of context does not accurately represent the overall message from this presentation or the agency's position that the *Sackett* decision does significantly change the law concerning reviewability of CWA administrative compliance orders. The focus of the presentation and discussion at the May 3, 2012 seminar was that compliance orders issued under 309(a) of the CWA will now be subject to judicial review and that the agency will ensure that its compliance orders are supported by an administrative record that describes the factual and legal basis for the order. It was clear from the entire presentation by the EPA speaker that EPA has and will continue to exercise sound principles of evidence gathering and legal analysis to support its administrative compliance orders, and that the EPA expects that judicial review would reaffirm the factual and legal support for orders issued by the agency. The

EPA has consistently stated since the *Sackett* decision that recipients of CWA section 309(a) compliance orders must be afforded an opportunity to challenge them in court. The agency is confident in the integrity of its administrative enforcement process and, as always, will issue compliance orders only when they are well supported by the facts and the law.

Again, thank you for your letter. If you have any questions, please contact me or have your staff contact Carolyn Levine, Office of Congressional and Intergovernmental Relations, at (202) 564-1859.

Sincerely,


Cynthia Giles

Enclosure



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

JUN 19 2012

OFFICE OF
ENFORCEMENT AND
COMPLIANCE ASSURANCE

MEMORANDUM

SUBJECT: Use of Clean Water Act Section 309(a) Administrative Compliance Order
Authority after *Sackett v. EPA*

FROM: Pamela J. Mazakas, Acting Director
Office of Civil Enforcement

A handwritten signature in black ink, reading "Pamela J. Mazakas", is written over the printed name and title.

TO: Addressees

As you know, on March 21, 2012, the Supreme Court ruled unanimously in *Sackett v. EPA*, 132 S. Ct. 1367, that administrative compliance orders issued under Section 309(a) of the Clean Water Act (CWA) are subject to pre-enforcement judicial challenge under the Administrative Procedure Act (APA). The Supreme Court's decision marked a significant change in the law concerning the reviewability of Section 309(a) administrative compliance orders. Prior to the Supreme Court's decision, all of the federal circuit courts to consider the question had held that Section 309(a) administrative compliance orders were not subject to pre-enforcement review.¹ The purpose of this memorandum is to provide guidance on the use of Section 309(a) administrative compliance order authority in response to the *Sackett* decision.

As a result of the Supreme Court's holding, recipients of Section 309(a) administrative compliance orders are now afforded an opportunity to challenge those orders under the APA, before EPA brings an action to enforce the order, a right not previously available to them in the courts. It is therefore incumbent on EPA enforcement staff to ensure that the regulated community, and in particular all recipients of Section 309(a) administrative compliance orders, are fully aware of this new right. Language clearly informing respondents of this right should be included with any unilateral Section 309(a) administrative compliance order issued by the Agency.

¹ *Southern Pines Assocs. v. United States*, 912 F.2d 713 (4th Cir. 1990); *Southern Ohio Coal Co. v. Office of Surface Mining, Reclamation & Enforcement*, 20 F.3d 1418 (6th Cir.), cert. denied, 513 U.S. 927 (1994); *Hoffman Group, Inc. v. EPA*, 902 F.2d 567 (7th Cir. 1990); *Sackett v. EPA*, 622 F.3d 1139 (9th Cir. 2010), rev'd, 132 S. Ct. 1367 (2012); *Laguna Gatuna, Inc., v. Browner*, 58 F.3d 564 (10th Cir. 1995), cert. denied, 516 U.S. 1071 (1996).

The Supreme Court's decision presents the Agency with an opportunity to evaluate how it can make the best use of limited enforcement resources to achieve compliance with environmental laws. While issuance of Section 309(a) administrative compliance orders remains a valuable tool to ensure compliance with the CWA, enforcement staff should continue to evaluate other enforcement approaches to promote compliance where appropriate in given circumstances. Other tools, such as less formal notices of violation or warning letters, can sometimes be helpful in resolving violations.

EPA enforcement staff should continue the practice of inviting parties to meet and discuss how CWA violations (and amelioration of the environmental impacts of such violations) can be resolved as quickly as possible. The goal of the administrative enforcement process is to address violations preferably by a mutually-agreed upon resolution through measures such as an administrative compliance order on consent. Using consensual administrative compliance orders, when possible, can help to reduce EPA and third party costs where regulated entities are willing to work cooperatively to quickly correct CWA violations and abate potential harm to human health and the environment.

Finally, the judicial review of Section 309(a) administrative compliance orders provides the opportunity to be even more transparent in demonstrating the basis for our enforcement orders. The Agency has historically exercised sound principles of evidence gathering and legal analysis to support its administrative compliance orders and is confident that judicial review would reaffirm the Agency's longstanding practice. The *Sackett* decision underscores the need for enforcement staff to continue to ensure that Section 309(a) administrative compliance orders are supported by documentation of the legal and factual foundation for the Agency's position that the party is not in compliance with the CWA. This will aid in the successful defense of any Section 309(a) administrative compliance order in court, should an order be challenged, and allow us to fulfill our statutory responsibility to address violations affecting the nation's waters.

We will continue to work closely with the Regions, Office of General Counsel, and the Department of Justice on any issues identified as we continue to evaluate and respond to the Supreme Court's decision. Thank you in advance for your ongoing cooperation. If you have additional questions, please contact me or Mark Pollins at (202) 564-4001.

Addressees:

OECA Office Directors and Deputies
Regional Counsels, Regions 1 - 10
Regional Enforcement Divisions Directors, Regions 1 - 10
Regional Enforcement Coordinators, Regions 1 - 10
Water Management Division Directors, Regions 1 - 10
Randy Hill, OWM
Steve Neugeboren, OGC
Letitia Grishaw, EDS/DOJ
Steven Samuels, EDS/DOJ
Benjamin Fisherow, EES/DOJ
Karen Dworkin, EES/DOJ

United States Senate

WASHINGTON, DC 20510

11-001-2491

July 26, 2011

The Honorable Lisa P. Jackson, Administrator
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, N.W.
Washington, DC 20460-0001

Dear Administrator Jackson:

We write to you out of concern regarding a proposed rule by the U.S. Environmental Protection Agency (EPA) to require power plants and other industrial and manufacturing facilities to minimize the impacts associated with the operation of cooling water intake structures (CWIS), as published in the *Federal Register* on April 20, 2011. Given the economic, environmental, and energy impacts this proposed rule could have, we urge the EPA to take a measured approach to this rulemaking in order to ensure sufficient flexibility and that any costs imposed by the requirements in the final rule are commensurate with the likely benefits.

Section 316(b) of the Clean Water Act (CWA) requires CWIS to reflect the best technology available for minimizing adverse environmental impact. For more than thirty years, the EPA and state governments have applied this requirement on a site-by-site basis, examining the impacts of CWIS on the surrounding aquatic environment.

As such, the proposed rule appropriately gives state governments the primary responsibility for making technology decisions regarding how best to minimize the entrainment of aquatic organisms at affected facilities, an approach which recognizes the importance of site-specific factors. A site-by-site examination of aquatic populations, source water characteristics, and facility configuration and location is vital in determining any environmental impacts, the range of available solutions, and the feasibility and cost-effectiveness of such solutions.

Unfortunately, the EPA has not adopted a similar approach to minimizing the impacts of impingement, but rather, is proposing uniform national impingement mortality standards. This approach to impingement sets performance and technology standards not demonstrated to be widely achievable and likely unattainable for many facilities. This method also takes away the technology determination from state governments and ignores the impingement reduction technologies already approved by these states as the best technology available.

And in so doing, the EPA has proposed a rule costing more than twenty times the estimated benefits – according to its very own estimate. This is notable considering the cost estimate does not include the cost of controls to address entrainment.

As an alternative, we believe the rule should give state environmental regulators the discretion to perform site-specific assessments to determine the best technology available for addressing both

July 26, 2011

Page 2

impingement and entrainment together. This approach stands in stark contrast to a national one-size-fits-all approach and allows a consideration of factors on a site-by-site basis. We feel this would provide consistency and give permitting authorities the ability to select from a full range of compliance options to minimize adverse environmental impacts, as warranted, while accounting for site-specific variability, including cost and benefits. Furthermore, we believe the EPA should focus on identifying beneficial technology options, rather than setting rigid performance standards; and the EPA should not define closed-cycle cooling to exclude those recirculating systems relying on man-made ponds, basins, or channels to remove excess heat.

Given the proposed rule's potential to impact every power plant across our country, an inflexible standard could result in premature power plant retirements, energy capacity shortfalls, and higher energy costs for consumers. Therefore, we urge you to use the flexibility provided by the Supreme Court and the Presidential Executive Order on regulatory reform, E.O. 13563, *Improving Regulation and Regulatory Review*, and modify the proposed rule to ensure that any new requirements will produce benefits commensurate with the costs involved and maximize the net benefits of the options available.

Thank you for your consideration of our request. We look forward to your response.

Sincerely,

to Benjamin Nelson

Sally Chavkin

Jerry Moran

Con McNeill

Pat Roberts

Jim Kinch

Ray Hunt

John Boozman

Mike Crapo

Jeff Sessions

Don Coats

Mark Warner

L. E.

Thad Cashman

J. Webb

L. J. Wister

M. N.

Lamar Alexander

P. Dorman

Mary J. Lantier

Mark Royce

J. de Mott

Mike Johnson

John H. H. H.

Amy Klobuchar

Mark R. Werner

S. M. H.



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

SEP - 2 2011

OFFICE OF
WATER

The Honorable Marco Rubio
United States Senate
Washington, DC 20510

Dear Senator Rubio:

Thank you for your letter of July 26, 2011, regarding the proposed regulation on cooling water intakes. Your concerns over potential economic, environmental, and energy impacts echo the concerns we are hearing from others during the public comment period.

Our goal was, and continues to be, a process that results in a common-sense and cost-effective approach to protecting aquatic life without sacrificing electricity services on which households and businesses across the country depend. I have strived to take a measured approach to this proposal by establishing a strong baseline level of protection, and then allowing states the primary responsibility to develop additional safeguards for aquatic life through a rigorous site-specific analysis. This approach allows states to consider technologies already employed by facilities, to address site-specific water characteristics and facility configuration, and to perform best technology available assessments by a process under which factors such as costs and benefits may be considered. Several of your specific comments on the proposed approach have resonated with us. For example, you mention the need for a more flexible approach to the impingement standard. Others have expressed a similar concern, and we have already had productive stakeholder discussions about alternatives.

The EPA is proposing these standards to meet its obligations under the Clean Water Act pursuant to a recent settlement agreement with environmental groups whereby the EPA agreed to issue a final decision by July 2012. When the Agency takes final action we will be providing the public and our regulated stakeholders with the regulatory certainty they have lacked for 30 years, and that certainty – in conjunction with the considerable flexibility our federal regulation provides to states – will allow regulated stakeholders to make sound investment decisions, and hasten our economic recovery.

Again, thank you for your letter. If you have further questions, please contact me, or your staff may call Greg Spraul in EPA's Office of Congressional and Intergovernmental Relations at 202-564-0255.

Sincerely,

A handwritten signature in black ink, appearing to read "Nancy K. Stoner", written over a horizontal line.

Nancy K. Stoner
Acting Assistant Administrator

11-001-0735

United States Senate
WASHINGTON, DC 20510

June 30, 2011

The Honorable Lisa P. Jackson
Administrator
United States Environmental Protection Agency
1200 Pennsylvania Avenue, NW
Washington, DC 20004

The Honorable Jo-Ellen Darcy
Office of the Assistant Secretary (Civil Works)
Department of the Army
108 Army Pentagon
Washington, DC 20310

Dear Administrator Jackson and Assistant Secretary Darcy:

On May 2, 2011 the Environmental Protection Agency and the Army Corps of Engineers (the Agencies) published in the Federal Register (76 Fed. Reg. 24479) a request for comments on draft guidance relating to the identification of waters protected under the Clean Water Act (CWA).

We have a great deal of concern about the actions that the Agencies are pursuing. The Agencies claim that this guidance document is simply meant to clarify how the Agencies understand the existing requirements of the CWA in light of the current law, regulations, and Supreme Court cases. More than clarifying, they greatly expand what could be considered jurisdictional waters through a slew of new and expanded definitions and through changes to applications of jurisdictional tests. This guidance document improperly interprets the opinions of the plurality and Justice Kennedy's opinion in *Rapanos v. United States* by incorporating only their expansive language in an attempt to gain jurisdictional authority over new waters, while ignoring both justices' clear limitations on federal CWA authority.¹ Attached are highlights of several specific issues regarding the draft guidance document.

The decision to change guidance, just a few short years after the Agencies issued official guidance on the exact same issue, has not been prompted by any intervening changes to the underlying statute through legislation or a new Supreme Court decision. Further, we understand that the Agencies intend this draft guidance to be the first step toward a formal rulemaking in the future. Because the Agencies' intent is to turn the draft interim guidance into regulations, it can only be interpreted to mean that they intend the guidance to be followed. Following the guidance will change the rights and responsibilities of individuals under the CWA – this is clearly the regulatory intent.

In the economic analysis completed by the Agencies, it was determined that as few as 2% or as many as 17% percent of non-jurisdictional determinations under current 2003 and 2008 guidance would be considered jurisdictional using the expanded tests under the draft guidance.² Any change in jurisdiction which results in a change to the rights and responsibilities of a land owner is, in fact, a change in the law as the program has been implemented to date.

Further, the draft guidance is intended to apply to more jurisdictional interpretations than just those covered by the Army Corps in making §404 determinations, but also those under §402 that governs

¹ 547 U.S. 715 (2006)

² "Potential Indirect Economic Impacts and Benefits Associated with Guidance Clarifying the Scope of Clean Water Act Jurisdiction." April 27, 2011 http://water.epa.gov/lawsregs/guidance/wetlands/upload/cwa_guidance_impacts_benefits.pdf

National Pollution Discharge Elimination System permits, §311, oil spills and SPCC plans, §303, water quality standards and TMDLs and §401 state water quality certifications. Because most states have delegated authority under many of these sections, this change in guidance will also result in a change in the responsibilities of states in executing their duties under the CWA. While we question seriously the need for this new guidance and believe that the Agencies lack the authority to rewrite their jurisdictional limitations in this manner, one thing is clear: it is fundamentally unfair to the States and the regulated community (including our nation's farmers and other property owners) to subject lands and waters under their control to a change in legal status of this magnitude via a "guidance document." Changes in legal status should only be done, if at all, through the regulatory process, specifically under the Administrative Procedure Act, subchapter II of chapter 5, and chapter 7, of title 5, United States Code.

Because the draft guidance will substantively change how the Agencies decide which waters are subject to federal jurisdiction and will impact the regulated community's rights and obligations under the CWA, this guidance has clear regulatory consequences and goes beyond being simply advisory guidelines. The draft guidance will shift the burden of proving jurisdictional status of waters from the Agencies to the regulated communities, thus making the guidance binding and fundamentally changing the legal rights and responsibilities that they have. When an agency acts to change the rights of an individual, we believe that the agency must go through the formal rulemaking process.

We respectfully request you abandon any further action on this guidance document.

Sincerely,

Sam McClellan

Pat Roberts

Michael McConnell

Lee Richardson

Lamar Alexander

Mike Crapo

Paul Coburn

Jeff Sessions

Mike Johanns

Richard A. Lugar

David Vitter

John Barrasso

Ray Hester

Chuck Grassley
Tom Cole

Jimmy Dean

Ron Johnson

Terry Moran

Rand Paul

Rob Portman

Kyle Bailey Hatcher

John A. Linn

Dean Heller

Tommy Kuhl

John Cornyn

Chris L. Hatch

Mark

Jim R. Kinch

Pat Romney

Sally Chaudhry

Ken Cook

Jim DeMint

Scott Carls

Richard Shelby

John Bozeman

Michael B. Eji

~~_____~~

L. E.

William J. E.

Roy Bent

John Hoven

Highlights of Concerns

The following are a selection of the concerns we have with the draft guidance.

Interstate waters:

The Agencies' have added language to their definition of interstate waters explicitly directing field staff to use "other waters" that lie across state boundaries for jurisdictional determinations. "Other waters" include: "intrastate lakes, rivers, streams (including intermittent streams), mudflats, sandflats, wetlands, sloughs, prairie potholes, wet meadows, playa lakes, or natural ponds." "Other waters" are now elevated to the same level as "navigable waters" for the purposes of determining whether or not waters are jurisdictional. Thus a geographically isolated prairie pothole that happens to be situated on a state boundary would be jurisdictional and could allow for a jurisdictional claim to be made on all other wet areas that have a "significant nexus" to the pothole. This new definition clearly goes beyond the current understanding expands the Agencies reach to previously non-jurisdictional waters.

Significant Nexus:

The new guidance makes substantial changes to what is considered a "significant nexus." Justice Kennedy's opinion in *Rapanos* stated that wetlands that have a "significant nexus" to traditional navigable waters are "waters of the United States:" "if the wetlands, either alone or in combination with similarly situated lands in the region, significantly affect the chemical, physical and biological integrity of other covered waters more readily understood as 'navigable.'" ³ Previous guidance read Justice Kennedy's language to apply to wetlands and limited the significant nexus tributaries to their higher order streams reach.

The new guidance eliminates the reach concept and applies the significant nexus test to all tributaries, wetlands, and proximate other waters that are "in the same watershed." Currently "other waters" are determined to be jurisdictional based on conditions that show their connections to interstate commerce. Additionally, waters may be aggregated and considered together, and if the category of water or wetland is determined to have a significant nexus to downstream waters, then each water or wetland in that category is considered a jurisdictional water of the United States.

The draft interim guidance dictates that determining what tributaries, wetlands, and other waters will have a "significant nexus" includes an analysis of the functions of waters to determine if they trap sediment, filter pollution, retain flood waters, and provide aquatic habitat. A significant nexus is based on both hydrological and ecological effects. A hydrological effect does not require a hydrological connection. The ability to hold water is considered an effect on downstream waters because that function arguably reduces the chances of downstream flooding. Furthermore effects on the chemical integrity of a water body on downstream waters could be reason for asserting jurisdiction, because it could show the ability to reduce the amount of pollutants that would otherwise enter a traditionally navigable water or interstate water. Biological effects include the capacity to transfer nutrients to downstream food webs or providing habitat for species that live part of their lives in downstream waters. Under this interpretation, an isolated water body can be considered to have a significant nexus to downstream waters. Again, if the category of water or wetland is determined to have a significant nexus to downstream waters, then each similarly situated water or wetland is considered jurisdictional.

"Significant nexus" is defined as any relationship that is "more than speculative or insubstantial." This is not the same as requiring a nexus actually be significant. Again, because of the expansive nature of what can be included under the "significant nexus," the draft interim guidance is likely to encompass far more waters than have been previously included. The increased scope not only of "significant nexus," but of

³ 547 U.S. 715, 780 (2006)

what waters may be tested using this test, will likely allow the Agencies to assert jurisdiction far beyond current practice.

Tributaries and Ditches:

Like interstate waters, tributaries are considered jurisdictional under the Agencies' regulations, but do not have the extensive new definition given in this guidance. A tributary now has the physical definition of the presence of a channel with a bed and an ordinary high water mark. Additionally ditches, which were generally excluded under the current guidance, have been included as tidal ditches or non-tidal ditches newly defined as meeting one of the following: (1) the ditch is an altered natural stream, (2) the ditch was excavated in a water or wetland, (3) the ditch has relatively permanent flowing or standing water, (4) the ditch connects two or more jurisdictional waters, or (5) the ditch drains natural water bodies, such as a wetland, into a tributary system of a navigable or interstate water. The new standards for asserting jurisdiction over ditches utilize both the plurality opinion and the Kennedy significant nexus test. As the draft interim guidance asserts, many previously non-jurisdictional ditches will likely be deemed jurisdictional.

The plurality opinion was clear that the Agencies' assertion of jurisdiction over ditches and ephemeral waters was incorrect. However, the draft interim guidance document allows the Agencies to use the plurality standard as a basis for asserting jurisdiction over ditches. Furthermore, the use of the Kennedy standard for asserting jurisdiction over tributaries ignores the fact that Kennedy was skeptical about the Agencies use of an ordinary high water mark as a presumption for asserting jurisdiction. While more detailed than previous guidance, the effect is the same: nearly everything that connects to a navigable water is jurisdictional. Both the plurality opinion and Kennedy rejected this assertion in *Rapanos*.



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

SEP - 2 2011

OFFICE OF
WATER

The Honorable Marco Rubio
United States Senate
Washington, DC 20510

Dear Senator Rubio:

Thank you for your letter of July 26, 2011, regarding the proposed regulation on cooling water intakes. Your concerns over potential economic, environmental, and energy impacts echo the concerns we are hearing from others during the public comment period.

Our goal was, and continues to be, a process that results in a common-sense and cost-effective approach to protecting aquatic life without sacrificing electricity services on which households and businesses across the country depend. I have strived to take a measured approach to this proposal by establishing a strong baseline level of protection, and then allowing states the primary responsibility to develop additional safeguards for aquatic life through a rigorous site-specific analysis. This approach allows states to consider technologies already employed by facilities, to address site-specific water characteristics and facility configuration, and to perform best technology available assessments by a process under which factors such as costs and benefits may be considered. Several of your specific comments on the proposed approach have resonated with us. For example, you mention the need for a more flexible approach to the impingement standard. Others have expressed a similar concern, and we have already had productive stakeholder discussions about alternatives.

The EPA is proposing these standards to meet its obligations under the Clean Water Act pursuant to a recent settlement agreement with environmental groups whereby the EPA agreed to issue a final decision by July 2012. When the Agency takes final action we will be providing the public and our regulated stakeholders with the regulatory certainty they have lacked for 30 years, and that certainty – in conjunction with the considerable flexibility our federal regulation provides to states – will allow regulated stakeholders to make sound investment decisions, and hasten our economic recovery.

Again, thank you for your letter. If you have further questions, please contact me, or your staff may call Greg Spraul in EPA's Office of Congressional and Intergovernmental Relations at 202-564-0255.

Sincerely,

A handwritten signature in black ink, appearing to read "Nancy K. Stoner".

Nancy K. Stoner
Acting Assistant Administrator

Congress of the United States

Washington, DC 20515

September 21, 2011

The Honorable Lisa P. Jackson
Administrator
United States Environmental Protection Agency
1200 Pennsylvania Ave, NW
Washington, DC 20460

Dear Administrator Jackson:

It has come to our attention that the Environmental Protection Agency (EPA) recently denied the Minnesota Center for Environmental Advocacy's (MCEA) petition requesting that the EPA set numeric nutrient water quality standards for the Mississippi River and the Gulf of Mexico. As representatives of the only state in the nation subject to EPA numeric nutrient standards, we hope that EPA's cooperative approach to the Mississippi River basin signals that EPA will immediately reconsider its unilateral actions in Florida.

In a letter dated July 29th to the Legal Director of MCEA, the EPA outlines several nation-wide efforts the Agency has made to address nutrient loadings throughout the country. The letter states that "the most effective and sustainable way to address widespread and pervasive nutrient pollution in the MARB and elsewhere is to build on these efforts and work cooperatively with states and tribes to strengthen nutrient management programs." Furthermore, the Agency states it is "exercising its discretion to allocate its resources in a manner that supports targeted regional and state activities to accomplish our mutual goals of reducing N and P pollution and accelerating the development and adoption of **state approaches** to controlling N and P." [*Emphasis added.*]

As you know, the State of Florida is the only state that EPA has overtaken with Federal regulations to address nutrients in water bodies. Notably, all of the national efforts outlined in the Agency's July 29th letter to MCEA equally apply to Florida. Additionally, in the EPA's own words, "Florida has developed and implemented some of the most progressive nutrient management strategies in the Nation."

Recognizing this good work in our state, on April 22nd, Secretary Vineyard of the Florida Department of Environmental Protection formally requested that EPA withdraw its Federal nutrient rules and instead allow Florida to manage nutrient loadings in its own waters. EPA has declined to accept this request, despite the clear evidence that Florida has been a national leader in water quality management. The state has invested millions of dollars into the EPA-approved TMDL program and has seen remarkable water quality improvements because of its work. In singling out Florida for federal nutrient criteria promulgation, however, EPA has continued to ignore the effective steps Florida has taken to manage nutrient loadings to its state waters.

Given your Agency's recent response to MCEA's petition and the efforts taken by our state agencies to properly implement nutrient control programs, we question the EPA's justification for ignoring the work in the State of Florida by declining to respond to the petition filed by the state on April 22nd. While we recognize the geographical differences in setting criteria for a region versus a single state, we fail to see the need for the Agency to continue to intervene in the State of Florida for the very reasons that the Agency denied MCEA's petition – the issue is best addressed by the states in cooperation with the EPA. The current regulatory scheme in Florida simply does not reflect cooperation. Furthermore and most importantly, it is our understanding that, by declining to simply take action on the DEP petition, the EPA has created further regulatory uncertainty for many of the employers in Florida eager to create more jobs for our constituents.

Consistent with the cooperative federalism envisioned by Congress in the Clean Water Act, we ask that the EPA immediately withdraw its decision to impose numeric nutrient criteria in Florida and place our state on a level playing field with states in the Mississippi River watershed and throughout the rest of the nation. Specifically, and to this end, we respectfully request that you immediately grant the petition filed on April 22nd by the State of Florida so that the state can move forward in protecting Florida's waters and businesses can move forward in creating more jobs in our state with newfound regulatory certainty.

Given the importance of this issue and the vast economic implications of inaction, we look forward to your prompt response.

Respectfully,

Mr. R

Bill Posey

D.C. Orr

Vern Buchanan

Connie Mack

W. R. Bilant

Jo Rye

Sandy Adams

Mike Smith

Al Miller

Shawn Remy

Steve

Boyd

Paul

John

Russ S. Gaud

Allen Bryant

Shawn R. Lottin

Jeff Miller

Cliff Young



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

DEC - 1 2011

OFFICE OF WATER

The Honorable Marco Rubio
United States Senate
Washington, D.C. 20510

Dear Senator Rubio:

Thank you for your letter of September 21, 2011, asking the Environmental Protection Agency (EPA) to reconsider its actions in Florida and grant the petition from the Florida Department of Environmental Protection (FDEP) to withdraw the numeric nutrient criteria promulgated by the EPA in Florida. You cite the EPA's recent denial of a petition for rulemaking by the Minnesota Center for Environmental Advocacy (MCEA) in which the Agency supported regional and state activities to accelerate the development and adoption of state approaches to controlling nitrogen and phosphorus pollution.

The EPA denied MCEA's petition because the Agency believes that the most effective and sustainable way to address widespread nitrogen and phosphorus pollution in the Mississippi-Atchafalaya River Basin (MARB) is to build on existing efforts, including providing technical assistance and collaborating with states to achieve near-term reductions, supporting states on development and implementation of numeric criteria, and working cooperatively with states and tribes to strengthen management programs. While the EPA denied MCEA's petition, it does not constitute a determination that new or revised water quality standards for nutrients are not needed in the MARB. The EPA is using its discretion not to make that determination at this time.

As outlined in the Agency's January 2009 determination and our recent response to FDEP's petition, we continue to believe that numeric nutrient criteria are necessary to meet the requirements of the Clean Water Act in the State of Florida, whether these criteria are promulgated by FDEP or by the EPA. The EPA supports FDEP's continued focus on reducing nitrogen and phosphorus pollution and commends the State's commitment to move forward with its rulemaking efforts for both inland and estuarine/coastal waters. In addition, both FDEP and the EPA share a strong and mutual commitment to assuring that the best data, science and technical analysis support the State's proposed revisions.

As you may know, the EPA has recently extended the deadlines of the court-ordered schedule for the proposal and final federal rules for numeric nutrient criteria for Florida's estuarine and coastal waters and southern Florida inland waters. The deadline for the proposed numeric nutrient criteria is extended to March 15, 2012. The deadline for the final rulemaking is extended to November 15, 2012. This extension will allow the EPA to consider the valuable feedback that we have received on criteria development from local experts from the FDEP and various Estuarine Programs and Water Management Districts in the State of Florida.

The EPA affirmed in its June 13, 2011, letter to FDEP that if the State adopts and the EPA approves protective nutrient criteria that are sufficient to address the concerns underlying its determination and rule, the EPA will promptly initiate rulemaking to repeal the corresponding federally-promulgated numeric nutrient criteria. The EPA also stated that if the March 2012 effective date is approaching but further steps were needed for Florida rule's to take effect, such as ratification by the Legislature, we will propose, through rulemaking, an additional extension of the effective date to enable Florida to complete such steps. In addition, the EPA stated that if FDEP adopts and the EPA approves criteria for any waters for which the EPA has not yet proposed or promulgated federal criteria, the EPA will not propose or promulgate (as appropriate) corresponding federal criteria.

The EPA has reviewed FDEP's October 24, 2011 draft rule on numeric nutrient criteria for inland and estuarine waters. In my November 2, 2011 letter to FDEP's Secretary Vinyard, I shared the EPA's preliminary evaluation to affirm our support for FDEP's efforts to address nutrient pollution. While the EPA's final decision to approve or disapprove any numeric nutrient criteria rule submitted by FDEP will follow our formal review of the rule and record under section 303(c) of the CWA, our current evaluation of the October 24, 2011 draft rule and related guidance leads us to the preliminary conclusion that the EPA would be able to approve the draft rule under the CWA. Should the EPA formally approve FDEP's final numeric nutrient criteria consistent with the CWA, the EPA would initiate rulemaking to withdraw federal numeric nutrient criteria for any waters covered by the new and approved state numeric water quality standards.

The EPA would like to see the State of Florida succeed in developing its own criteria. We will continue working with the State by offering technical support, expertise, feedback and other assistance in order to develop defensible numeric nutrient standards that meet the goals of the Clean Water Act, reduce and prevent the harmful effects of nutrient pollution, and protect the economy and public health of the State.

Again, thank you for your letter. If you have further questions, please contact me, or have your staff call Denis Borum in the EPA's Office of Congressional and Intergovernmental Relations at (202) 564-4836.

Sincerely,

A handwritten signature in black ink, appearing to read 'Nancy K. Stoner', with a stylized flourish at the end.

Nancy K. Stoner
Acting Assistant Administrator

Congress of the United States
Washington, DC 20515

12-000-5280
—

March 5, 2012

The Honorable Lisa Jackson
Administrator
United States Environmental Protection Agency
1200 Pennsylvania Avenue, NW
Washington, DC 20450

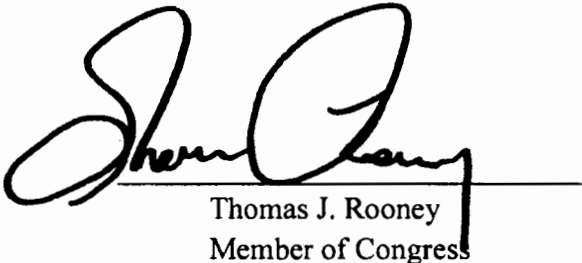
Dear Administrator Jackson:

As members of the Florida Congressional delegation we write to respectfully request your prompt review and approval of the Florida Department of Environmental Protection's (FDEP) numeric nutrient criteria rule. The rule that you have received reflects months of extraordinarily hard work by many individuals in the state to ensure that it could be approved as soon as it was submitted to your agency. Based on sound science and years of research, the rule reflects the views of stakeholders, environmental regulators, the Florida Environmental Regulation Commission and finally the Florida Legislature. The rule was approved unanimously by the Florida legislature and signed by Governor Scott on February 16, 2012.

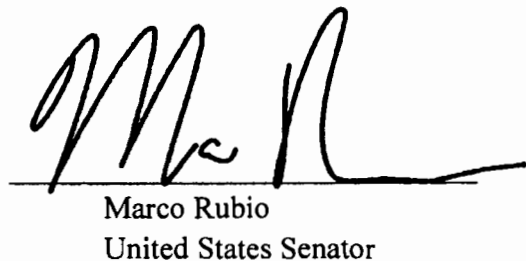
FDEP's rule has strong scientific underpinnings and will protect the unique and critical water bodies of our state. It is specifically designed to protect lakes, streams, and estuaries from nutrient pollution without inflicting unnecessary costs and hardships on Floridians. We are all in agreement that Florida needs strong regulatory protection for its waters that should be in conjunction with, not against, the needs of the consumer and our industries. The FDEP rule does an admirable job of considering all factors and protecting our waters.

EPA officials have stated on numerous occasions that it would prefer States, including Florida, to establish their own water quality standards. Florida has delivered on its responsibilities and we ask that as quickly as possible you review and approve the rule in its entirety as it was approved by the legislature and signed by our Governor.

Sincerely,



Thomas J. Rooney
Member of Congress



Marco Rubio
United States Senator



Sandy Adams
Member of Congress



Gus Bilirakis
Member of Congress



Corrine Brown
Member of Congress



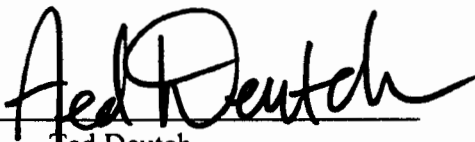
Vern Buchanan
Member of Congress



Ander Crenshaw
Member of Congress



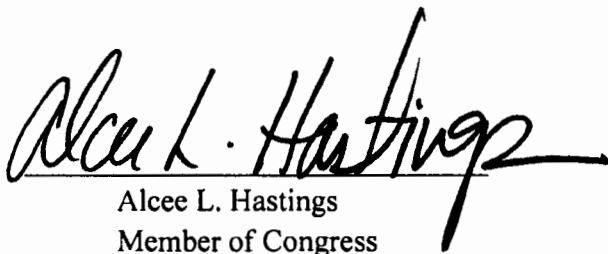
Allen West
Member of Congress



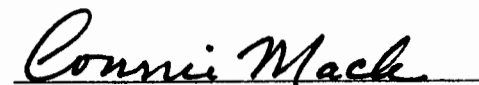
Ted Deutch
Member of Congress



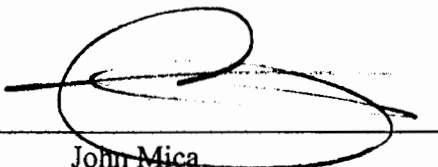
Mario Diaz-Balart
Member of Congress



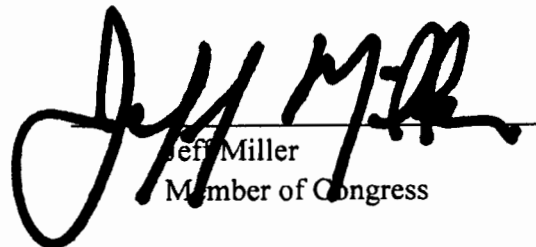
Alcee L. Hastings
Member of Congress



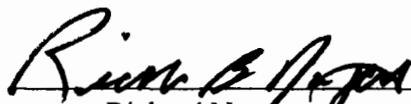




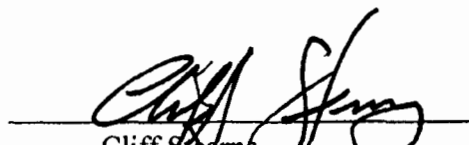
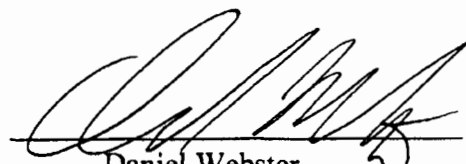
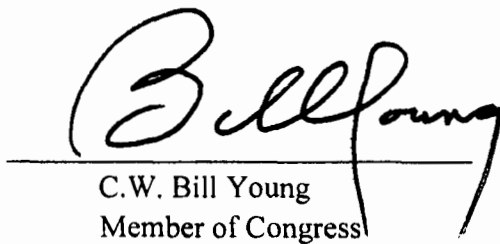
Connie Mack
Member of Congress



John Mica
Member of Congress



Jeff Miller
Member of Congress


Richard Nugent
Member of Congress
Bill Posey
Member of Congress
David Rivera
Member of Congress
Ileana Ros-Lehtinen
Member of Congress
Dennis Ross
Member of Congress
Steve Southerland
Member of Congress
Cliff Stearns
Member of Congress
Daniel Webster
Member of Congress
C.W. Bill Young
Member of Congress



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

APR 18 2012

OFFICE OF WATER

The Honorable Marco Rubio
United States Senate
Washington, D.C. 20510

Dear Senator Rubio:

Thank you for your letter of March 5, 2012, from the Florida Congressional delegation requesting that the Environmental Protection Agency (EPA) promptly review and approve the Florida Department of Environmental Protection's (FDEP) numeric nutrient criteria rule.

You note that the Florida legislature and Governor Scott have completed necessary legislative ratification of the numeric nutrient criteria rule and directed the FDEP to submit the rule to the EPA for review. On February 20, 2012, the FDEP sent the rule to the EPA, which sets numeric nutrient criteria for lakes, spring vents, streams, and certain estuaries in Florida, as well as material supporting those criteria.

We understand that an administrative challenge was filed on the proposed rules and that the Administrative Law Judge is not expected to issue an order with regard to the proceedings until April or May 2012. We also understand that, depending on the resolution of the challenge, the rule may then be sent to the Florida Secretary of State for final adoption.

We have begun an informal review of the information submitted by the FDEP. When we receive notification from the state of Florida that the rule has been officially adopted as revisions to the State's water quality standards, we can begin our formal review pursuant to section 303(c) of the Clean Water Act.

We look forward to working with the FDEP as we conduct our review. If you have further questions, please contact me or your staff may call Denis Borum in the EPA's Office of Congressional and Intergovernmental Relations at (202) 564-4836.

Sincerely,

A handwritten signature in black ink, appearing to read "Nancy K. Stoner", is written over a horizontal line.

Nancy K. Stoner
Acting Assistant Administrator



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

12-001-5665

SEP 21 2012

OFFICE OF
SOLID WASTE AND
EMERGENCY RESPONSE

The Honorable Marco Rubio
United States Senate
Washington, D.C. 20510

Dear Senator Rubio:

The U.S. Environmental Protection Agency's (EPA) Superfund program will be adding the Fairfax St. Wood Treaters site, located in Jacksonville, Florida, to the National Priorities List (NPL) by rulemaking. The EPA received a governor/state concurrence letter supporting the listing of this site on the NPL. Listing on the NPL provides access to federal cleanup funding for the nation's highest priority contaminated sites.

Because the site is located within your state, I am providing information to help in answering questions you may receive from your constituency. The information includes a brief description of the site, and a general description of the NPL listing process.

If you have any questions, please contact me or your staff may contact Raquel Snyder, in the EPA's Office of Congressional and Intergovernmental Relations, at (202) 564-9586. We expect the rule to be published in the Federal Register in the next several days.

Sincerely,

A handwritten signature in black ink that reads "Mathy Stanislaus". The signature is written in a cursive, flowing style.

Mathy Stanislaus
Assistant Administrator

Enclosures

NATIONAL PRIORITIES LIST (NPL)

Final Site

September 2012

FAIRFAX ST. WOOD TREATERS | **Jacksonville, Florida**
Duval County**📍 Site Location:**

Fairfax St. Wood Treaters is located at 2610 Fairfax Street, Jacksonville, Florida. The 12-acre property is located in a dense residential area, adjacent to two elementary schools, a day care center and several homes.

📖 Site History:

From 1980 to 2010, Wood Treaters, LLC pressure treated utility poles, pilings and other lumber products using the preservative chromated copper arsenate (CCA). Wood Treaters, LLC filed for bankruptcy, and by July 2010 ceased operations and abandoned the facility. Seven above ground storage tanks, in poor condition, contained high levels of arsenic, chromium and copper. In August 2010, the State of Florida Department of Environmental Protection requested the EPA's assistance in mitigating the release of hazardous substances to the environment.

■ Site Contamination/Contaminants:

CCA is characterized by a bright green color and is composed of waterborne oxides of chromium, copper and arsenic. Wood treated with CCA drip-dried on the property, resulting in arsenic, chromium and copper contamination. During operations, some contaminated storm water flowed off the site and onto surrounding properties including a parking lot retention pond and Moncrief Creek. Wood treating operations resulted in soil, water and sediment contamination with chromium, copper and arsenic. Arsenic and chromium are known human carcinogens.

🏠 Potential Impacts on Surrounding Community/Environment:

Several nearby residential properties, two schools and a day care center have been contaminated by the site. The contamination migrated to surrounding properties by overland storm water runoff or by wind deposition. Moncrief Creek is potentially contaminated and will be investigated during the Remedial Investigation.

🚧 Response Activities (to date):

On August 11, 2010, the EPA initiated a Superfund emergency response and removal action to secure the site and prevent further releases of hazardous substances. To date, the EPA response actions have prevented contaminated water from discharging offsite, removed water and sediment from the onsite retention pond, removed the surface soil across the entire site and removed all tanks and piping. In addition, the EPA removed contaminated soil, and the water and sediments of a retention pond, on the adjacent elementary school playground.

📋 Need for NPL Listing:

The state referred the site to the EPA because the operator abandoned the facility. No other federal and state cleanup programs are available to remediate the site. Inclusion on the Superfund National Priorities List will allow the EPA to address subsurface soil contamination on the site, soil contamination on residential properties surrounding the site, and to determine the impacts of the site on local ground water and surface water. The EPA received a letter of support for placing this site on the NPL from the state of Florida.

[The description of the site (release) is based on information available at the time the site was evaluated with the HRS. The description may change as additional information is gathered on the sources and extent of contamination.]

For more information about the hazardous substances identified in this narrative summary, including general information regarding the effects of exposure to these substances on human health, please see the Agency for Toxic Substances and Disease Registry (ATSDR) ToxFAQs. ATSDR ToxFAQs can be found on the Internet at <http://www.atsdr.cdc.gov/toxfaq/index.asp> or by telephone at 1-888-42-ATSDR or 1-888-422-8737.

NATIONAL PRIORITIES LIST (NPL)

WHAT IS THE NPL?

The National Priorities List (NPL) is a list of national priorities among the known or threatened releases of hazardous substances throughout the United States. The list serves as an information and management tool for the Superfund cleanup process as required under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA). The NPL is intended primarily to guide EPA in determining which sites warrant further investigation to assess the nature and extent of public health and environmental risks associated with a release of hazardous substances.

There are three ways a site is eligible for the NPL:

1. Scores at least 28.50:

A site may be included on the NPL if it scores sufficiently high on the Hazard Ranking System (HRS), which EPA published as Appendix A of the National Contingency Plan. The HRS is a mathematical formula that serves as a screening device to evaluate a site's relative threat to human health or the environment. As a matter of Agency policy, those sites that score 28.50 or greater on the HRS are eligible for inclusion on the NPL. This is the most common way a site becomes eligible for the NPL.

2. State Pick:

Each state and territory may designate one top-priority site regardless of score.

3. ATSDR Health Advisory:

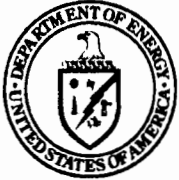
Certain other sites may be listed regardless of their HRS score, if all of the following conditions are met:

- a. The Agency for Toxic Substances and Disease Registry (ATSDR) of the U.S. Department of Health and Human Services has issued a health advisory that recommends removing people from the site;
- b. EPA determines that the release poses a significant threat to public health; and
- c. EPA anticipates it will be more cost-effective to use its remedial authority than to use its emergency removal authority to respond to the site.

Sites are first proposed to the NPL in the *Federal Register*. EPA then accepts public comments for 60 days about listing the sites, responds to the comments, and places those sites on the NPL that continue to meet the requirements for listing. To submit comments, visit www.regulations.gov.

Placing a site on the NPL does not assign liability to any party or to the owner of any specific property; nor does it mean that any remedial or removal action will necessarily be taken.

For more information, please visit www.epa.gov/superfund/sites/npl/.



Department of Energy
Washington, DC 20585

11-001-0497
—

June 20, 2011

Ms. Fay Iudicello
Director of Executive Secretariat
Office of the Executive Secretariat and Regulatory Affairs
Department of the Interior
1849 C Street NW, Room 7212
Washington, DC 20240

Mr. Eric Wachter
Director
Executive Secretariat
United States Environmental Protection Agency
Ariel Rios Federal Building
1200 Pennsylvania Avenue, NW
Washington, DC 20460

Dear Ms. Iudicello and Mr. Wachter:

On June 1, 2011, the enclosed letter to President Obama from Senator John Cornyn and 27 other members of Congress was received at the Department of Energy for response. Because the subject of the letter does not fall within the purview of the Department of Energy, we are forwarding the letter to both the Department of Interior and the Environmental Protection Agency.

If you have any questions, please call me on 202-586-8923.

Sincerely,

Brenda L. Mackall
Work Group Leader
Correspondence and Records Management
Office of the Executive Secretariat

Enclosure
WH ID 1053632



EXEC-2011-086809

THE WHITE HOUSE OFFICE

REFERRAL

2011 JUN -2 PM 12: 04

May 26, 2011

TO: DEPARTMENT OF ENERGY

ACTION COMMENTS:

ACTION REQUESTED: APPROPRIATE ACTION

REFERRAL COMMENTS:

DESCRIPTION OF INCOMING:

ID: 1053632

MEDIA: LETTER

DOCUMENT DATE: April 06, 2011

TO: PRESIDENT OBAMA

FROM: THE HONORABLE JOHN CORNYN
UNITED STATES SENATE
WASHINGTON, DC 20510

SUBJECT: EXPRESSES COMMENT REGARDING REGULATIONS THAT HINDER OUR NATION
FROM PRODUCING OUR OWN DOMESTIC SUPPLY OF OIL AND GAS

COMMENTS:

PROMPT ACTION IS ESSENTIAL – IF REQUIRED ACTION HAS NOT BEEN TAKEN WITHIN 9 WORKING DAYS OF RECEIPT, UNLESS OTHERWISE STATED, PLEASE TELEPHONE THE UNDERSIGNED AT (202) 456-2590.

RETURN ORIGINAL CORRESPONDENCE, WORKSHEET AND COPY OF RESPONSE (OR DRAFT) TO: DOCUMENT TRACKING UNIT, ROOM 85, OFFICE OF RECORDS MANAGEMENT - THE WHITE HOUSE, 20500
FAX A COPY OF REPOSE TO: (202) 456-5881

**THE WHITE HOUSE
DOCUMENT MANAGEMENT AND
TRACKING WORKSHEET**



DATE RECEIVED: April 15, 2011

CASE ID: 1053632

NAME OF CORRESPONDENT: THE HONORABLE JOHN CORNYN

SUBJECT: EXPRESSES COMMENT REGARDING REGULATIONS THAT HINDER OUR NATION FROM PRODUCING OUR OWN DOMESTIC SUPPLY OF OIL AND GAS

ROUTE TO: AGENCY/OFFICE	(STAFF NAME)	ACTION		DISPOSITION	
		CODE	DATE	TYPE RESPONSE	CODE DATE COMPLETED
LEGISLATIVE AFFAIRS	ROB NABORS	ORG	04/18/2011		

ACTION COMMENTS:

✓DOE

A 5/25/11

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COMMENTS: 28 ADDL SIGNEES

MEDIA TYPE: LETTER

USER CODE:

ACTION CODES	TYPE RESPONSE	DISPOSITION	COMPLETED DATE
A = APPROPRIATE ACTION B = RESEARCH AND REPORT BACK D = DRAFT RESPONSE I = INFO COPY/NO ACT NECESSARY R = DIRECT REPLY W/ COPY ORG = ORIGINATING OFFICE	INITIALS OF SIGNER (W.H. STAFF) NRN = NO RESPONSE NEEDED OTBE = OVERTAKEN BY EVENTS	A = ANSWERED OR ACKNOWLEDGED C = CLOSED X = INTERIM REPLY	DATE OF ACKNOWLEDGEMENT OR CLOSEOUT DATE (MM/DD/YY)

KEEP THIS WORKSHEET ATTACHED TO THE ORIGINAL INCOMING LETTER AT ALL TIMES
REFER QUESTIONS TO DOCUMENT TRACKING UNIT (202)-456-2590
SEND ROUTING UPDATES AND COMPLETED RECORDS TO OFFICE OF RECORDS MANAGEMENT - DOCUMENT TRACKING UNIT ROOM 85, EEOB.

Scanned By
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United States Senate

WASHINGTON, DC 20510

April 6, 2011

The Honorable Barack H. Obama
President of the United States
The White House
1600 Pennsylvania Avenue, NW
Washington, DC 20500

Dear Mr. President:

As rising gasoline prices threaten our nation's economic recovery, we welcome your acknowledgement of the positive impact which increased domestic supplies of oil and gas will have for American families and businesses. In your speech on March 30, you stated, "producing more oil in America can help lower oil prices, create jobs, and enhance our energy security."

We agree, and we also share the goal of reducing our dependence on foreign oil. It is an achievable goal, as we know we have the resources to control our energy future. A recent report from the Congressional Research Service detailed our vast energy resources, showing America's recoverable resources are far larger than those of Saudi Arabia, China, and Canada combined. America's combined recoverable oil, natural gas, and coal endowment is the largest on Earth – and this is without including America's immense oil shale and methane hydrates deposits.

However, it is not just rhetoric that is keeping us from achieving the goals you outlined of lowering energy prices, creating jobs, and reducing our reliance on foreign energy. Rather, we are concerned that these goals are in direct conflict with certain ongoing actions of your Administration. In particular, the policies being carried out by the Environmental Protection Agency (EPA) and the Department of the Interior (DOI) directly and negatively impact oil and gas production and prices, as well as electricity prices for businesses and consumers. These policies hang heavy over the economy, with the promise of making our existing energy resources more expensive for Americans, and serve to inhibit future growth.

With consumers again facing \$4.00/gallon gasoline, the EPA is pursuing job-killing greenhouse gas regulations that, like the failed cap-and-trade legislation, will serve as an energy tax on every consumer. The Affordable Power Alliance recently studied the impacts of this action and found that the price of gasoline and electricity could increase as much as 50 percent. To make matters worse, the EPA acknowledges that unilateral action by the United States will have no impact on the world's climate, as China and India dramatically increase their emissions.

You also referenced efforts within the Administration to encourage domestic oil and gas production, yet since taking office, DOI has done exactly the opposite. In 2009, 77 oil and gas leases in Utah were cancelled, and the following year 61 additional leases were suspended in Montana. In December 2010, your Administration announced that its 2012-2017 lease plan would not include new areas in the eastern Gulf of Mexico or off the Atlantic coast – though these two areas hold commercial oil reserves of 28 billion barrels and up to 142 trillion cubic feet of natural gas. Delaying access to these areas not only hinders the production of domestic energy, but also means the loss of up to \$24 billion in federal revenue. In Alaska, the EPA has failed to issue valid air quality permits for offshore exploration after over 5 years of bureaucratic

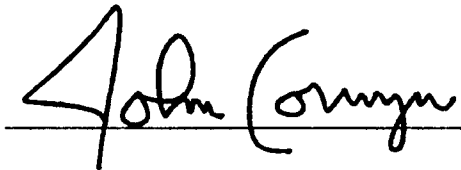
1053632

wrangling, although no human health risk is at issue and over 25 billion barrels of oil may be discovered. EPA has also contributed to the continuing delay of production from the National Petroleum Reserve-Alaska – an area specifically designated by Congress for oil and gas development.

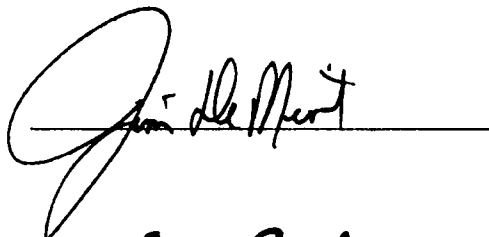
Last year, American oil production reached its highest level since 2003. The Energy Information Administrator (EIA) Richard Newell recently pointed out that the 2010 production numbers are likely the result of new leases issued during the previous administration that are just recently beginning to produce oil. Unfortunately, in the Gulf of Mexico, offshore energy production is expected to decrease by 13 percent in 2011. This decrease is cited as the result of the moratorium and the slow pace of permitting. EIA's most recent short-term energy outlook projects that domestic crude oil and liquid fuels production is expected to fall by 110,000 bbl/d in 2011, and by a further 130,000 bbl/d in 2012. To date, only 8 deepwater permits have been issued during the past 12 months, and most of these operations were started before the Macondo well blowout.

At your State of the Union Address, you called for a review of job-killing regulations within your Administration. We believe the Administration hereby has the keys to unlock our domestic energy potential today. As this review is underway, and with recognition of the toll higher energy prices are taking on Americans, we respectfully encourage you to examine the damage these current policies are having on the economy, and to work to reconcile these contradictions.

Respectfully,

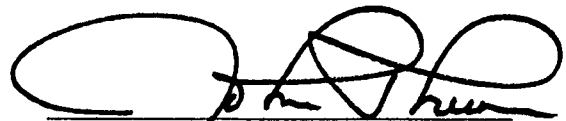

John Cornyn

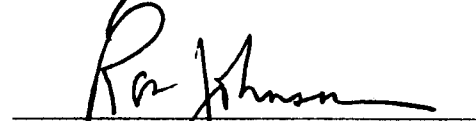

David Vitter


Jim DeMint


Rand Paul


Rick Warren


John Stuenkel


Roy Johnson


Kelly Ayotte

Jeff Ammons

Paul Corbin

Richard Shelby

Clare Kim

Jo Bunn

Ly Hill

John Borgman

Ray Bend

Rich

Kevin Hatch

Sarkyl

W Bunn

Paul Corbin

Jerry Moras

Kay Bailey Hutchins

Mc R

Barack Obama

Sally Chaudhry

Pat Roberts

Michael B. Enzi

Lyndee Weiler

The Honorable Barack H. Obama
Page Five

Signers in order of signature (left to right):

John Cornyn, United States Senator
James Inhofe, United States Senator
David Vitter, United States Senator
John Thune, United States Senator
Jim DeMint, United States Senator
Ron Johnson, United States Senator
Rand Paul, United States Senator
Kelly Ayotte, United States Senator
Jeff Sessions, United States Senator
James E. Risch, United States Senator
Thad Cochran, United States Senator
Orrin Hatch, United States Senator
Richard Shelby, United States Senator
Jon Kyl, United States Senator
Mark Kirk, United States Senator
Richard Burr, United States Senator
John Barrasso, United States Senator
(duplicate)
Lindsey Graham, United States Senator
Jerry Moran, United States Senator
John Boozman, United States Senator
Kay Bailey Hutchison, United States Senator
Roy Blunt, United States Senator
Marco Rubio, United States Senator
Johnny Isakson, United States Senator
Mike Enzi, United States Senator
Saxby Chambliss, United States Senator
Roger Wicker, United States Senator
Pat Roberts, United States Senator



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

FEB 24 2012

OFFICE OF CONGRESSIONAL
AND INTERGOVERNMENTAL RELATIONS

The Honorable Marco Rubio
United States Senate
Washington, D.C. 20510

Dear Senator Rubio:

Thank you for your letter of April 6, 2011, co-signed by 27 of your colleagues, addressed to President Obama regarding permitting of additional oil and gas production and greenhouse gas (GHG) regulation under the Clean Air Act. I have been asked to respond with respect to actions by the U.S. Environmental Protection Agency.

On March 30, 2011, the President released the Blueprint for a Secure Energy Future, which recognizes the importance of producing domestic oil safely and responsibly, while taking steps to reduce our overall dependence on oil through increased use of cleaner, alternative fuels and greater energy efficiency. The country has already made progress towards these objectives. Last year, America produced more oil than we had since 2003. In addition, the EPA and the U.S. Department of Transportation (DOT) have worked with the auto industry, auto workers, and other stakeholders to issue new standards that will reduce our transportation sector's reliance on oil while reducing GHG emissions.

The EPA's 2012-2016 GHG standards for light duty vehicles, set jointly with fuel economy standards, are projected to save 1.8 billion barrels of oil over the lifetime of those vehicles. This program represents the first meaningful update to fuel efficiency standards in three decades. In 2010, the President announced another major agreement with industry and the auto workers for the EPA and DOT to set GHG and fuel economy standards for model years 2017-2025. On November 16, 2011, the EPA and DOT issued the proposal to extend the National Program of harmonized GHG and fuel economy standards to model year 2017 through 2025 passenger vehicles. The combination of 2011 fuel economy standards, the 2012-2016 GHG emissions and fuel economy standards, and the proposed 2017-2025 standards will dramatically cut the oil we consume, saving a total of 12 billion barrels of oil and \$1.7 trillion in fuel costs to American families. Also, the EPA on August 9 finalized standards for heavy duty trucks for model years 2014-2018 that are expected to save more than 500 million barrels of oil over the lifetime of those vehicles. These historic steps to reduce our dependence upon oil will protect our economy from the rising price of oil, reduce air pollution, and create and protect jobs in our manufacturing sector.

With respect to new production, the EPA supports an efficient process for Outer Continental Shelf (OCS) oil and gas permitting to enable domestic energy supplies to be developed safely and responsibly. The Bureau of Ocean Energy Management (BOEM) is the federal agency that provides authorization to drill. (The Department of Interior has responded separately to your letter.) The EPA's permits ensure compliance with air quality and wastewater discharge regulations, when and if drilling commences.

Arctic energy exploration raises special challenges and permitting issues not previously addressed in the Gulf of Mexico. The President's Blueprint established a cross-agency team to address these issues and facilitate a more efficient offshore permitting process in Alaska, while ensuring that safety, health, and environmental standards are fully met. The EPA participates in this team. In addition, the Agency has established a work group of regional and headquarters permit experts to help expedite resolution of OCS air permitting issues.

On December 23, 2011, the President signed into law the Consolidated Appropriations Act of 2012, which divested the EPA of the authority to issue air quality permits to OCS sources located off the North Slope Borough of the State of Alaska (not including any pending or existing air quality permit). Nonetheless, we would like to set the record straight on your claim that EPA failed to act on pending OCS permits for five years. Over the past five years, the EPA has issued nine OCS air permits to Shell, working closely with Shell on processing its permit applications, through several company decisions to change or withdraw applications, and through permit appeals. The EPA recently issued three of these air permits to Shell for exploratory oil and gas drilling on the OCS in the Chukchi and Beaufort seas and one to Shell for operations on the OCS in the Gulf of Mexico. EPA also issued air permits on the OCS in the Gulf of Mexico to Eni U.S. Operating Company and Anadarko Petroleum Corporation for drillships and support vessels. ConocoPhillips Company filed an air permit application involving the OCS off Alaska for a minor source exploration project in the Chukchi Sea, but the company on September 26 withdrew the application and expressed its intent to submit a new OCS permit application in the near future.

Your letter also raised concerns about GHG regulation and the economy. The EPA is taking initial steps to reduce GHG emissions from large sources using Clean Air Act tools that have been used for the last 40 years to control traditional pollutants. These tools have proven effective and consistent with a strong economy. Since 1970, emissions of six key pollutants have dropped more than 60 percent while the size of the economy (gross domestic product) has grown more than 200 percent. The motor vehicle GHG and fuel economy standards discussed above are an example of how reducing carbon pollution and strengthening our economy can go hand in hand. Though some opponents purport to estimate the economic impacts of future GHG regulation, such estimates are without foundation as they are based on speculation about actions the agency has neither proposed nor endorsed.

By contrast, there is a strong foundation for proceeding with reasonable, measured steps to reduce GHG emissions from large emitters. The National Research Council (NRC) of the National Academies stated in a 2011 report, "Each additional ton of greenhouse gases emitted commits us to further change and greater risks. In the judgment of the [NRC] Committee on America's Climate Choices, the environmental, economic, and humanitarian risks of climate change indicate a pressing need for substantial action to limit the magnitude of climate change and to prepare to adapt to its impacts."¹ The NRC also has emphasized that, because GHGs persist and accumulate in the atmosphere, reductions in the near-term are important in determining the extent of climate change impacts over the next decades, centuries, and millennia.² The EPA's targeted actions to reduce GHG emissions from large sources will contribute to the emissions reductions required to slow or reverse the accumulation of GHG concentrations in the atmosphere.

¹ National Research Council (2011) *America's Climate Choices*, Committee on America's Climate Choices, Board on Atmospheric Sciences and Climate, Division on Earth and Life Studies, The National Academies Press, Washington, DC.

² National Research Council (NRC) (2011). *Climate Stabilization Targets*. Committee on Stabilization Targets for Atmospheric Greenhouse Gas Concentrations; Board on Atmospheric Sciences and Climate, Division of Earth and Life Sciences, National Academy Press. Washington, DC.

The nation does not have to choose between protecting jobs and protecting the public from pollution -- we can do both. A study led by Harvard economist Dale Jorgenson found that implementing the Clean Air Act actually increased the size of the US economy because the health benefits of the Clean Air Act lead to a lower demand for health care and a healthier, more productive workforce. According to that study, by 2030 the Clean Air Act will have prevented 3.3 million lost work days and avoided the cost of 20,000 hospitalizations every year.³ Another study that examined four regulated industries (pulp and paper, refining, iron and steel, and plastic) concluded that, "We find that increased environmental spending generally does not cause a significant change in employment."⁴

Money spent on environmental protection does not disappear from the economy; it creates and supports jobs in engineering, manufacturing, construction, materials, operation and maintenance. For example, the environmental technologies and services industry employed 1.7 million workers in 2008 and accounted for exports of \$44 billion of goods and services.⁵

In conclusion, the EPA is part of the administration's effort to implement the President's Blueprint for a Secure Energy Future, and believes that protecting public health and building a stronger economy go hand in hand.

Again, thank you for your letter. If you have any questions, please contact me or your staff may contact Josh Lewis in the EPA's Office of Congressional and Intergovernmental Relations at (202) 564-2095.

Sincerely,



Arvin R. Ganesan
Associate Administrator

³ Dale W. Jorgenson Associates (2002a). *An Economic Analysis of the Benefits and Costs of the Clean Air Act 1970-1990. Revised Report of Results and Findings*. Prepared for EPA. [http://yosemite.epa.gov/ee/epa/eeerm.nsf/vwAN/EE-0565-01.pdf/\\$file/EE-0565-01.pdf](http://yosemite.epa.gov/ee/epa/eeerm.nsf/vwAN/EE-0565-01.pdf/$file/EE-0565-01.pdf)

⁴ Morgenstern, R. D., W. A. Pizer, and J. S. Shih. 2002. "Jobs versus the Environment: An Industry-Level Perspective." *Journal of Environmental Economics and Management* 43(3):412-436.

⁵ DOC International Trade Administration. "Environmental Technologies Industries: FY2010 Industry Assessment." [http://web.ita.doc.gov/ete/eteinfo.nsf/068f3801d047f26e85256883006ffa54/4878b7e2fc08ac6d85256883006c452c/\\$FILE/FuII%20Environmental%20Industries%20Assessment%202010.pdf](http://web.ita.doc.gov/ete/eteinfo.nsf/068f3801d047f26e85256883006ffa54/4878b7e2fc08ac6d85256883006c452c/$FILE/FuII%20Environmental%20Industries%20Assessment%202010.pdf) (accessed February 8, 2011)

United States Senate
WASHINGTON, DC 20510

April 23, 2013

The Honorable Bob Perciasepe
Acting Administrator
U.S. Environmental Protection Agency
1200 Pennsylvania Ave, NW
Washington, D.C. 20460

Dear Acting Administrator Perciasepe:

The Environmental Protection Agency (EPA) has indicated that it plans to move forward with a formal rulemaking to clarify the definition of "waters of the United States" under the Clean Water Act (CWA).¹ We understand that the agency has yet to determine whether it will go forward with finalizing the proposed guidance in addition to the rulemaking or choose to conduct only a rulemaking.² As you know, this rulemaking is of extreme significance, as the scope of the final rule will indicate whether EPA intends to redefine when isolated wetlands, intermittent streams, and other non-navigable waters should be subject to regulation under the CWA.

We write to express continued concern over the possible finalization of the proposed guidance. We request that you formally withdraw the draft guidance sent to Office of Management and Budget (OMB) in February 2012, and redirect the agency's finite resources.³ The draft guidance promulgated in 2011, if finalized, could expand the scope of the waters to be regulated beyond that intended by Congress. Moreover, leaving the guidance in place would further frustrate any potential rulemaking process. Given the significance of redefining jurisdictional limits to impose CWA authority, a formal rulemaking process provides a greater opportunity for public input and greater regulatory certainty than a guidance document.

With regard to the rulemaking, we ask that you stay within the confines of current law and eschew attempts to expand jurisdiction beyond the intent of Congress. Any rulemaking should identify limits to EPA's jurisdiction under the statute consistent with those articulated in the Supreme Court decisions of *SWANCC*⁴ and *Rapanos*.⁵ In both of these cases, the U.S.

¹ Clean Water Act Definition of "Waters of the United States,"
<http://water.epa.gov/lawsregs/guidance/wetlands/CWAwaters.cfm>.

² *Fate Of Controversial Guide Seen As Key To Rule Clarifying CWA Scope*, InsideEPA.com, Mar. 8, 2013, available at <http://insideepa.com/Water-Policy-Report/Water-Policy-Report-03/11/2013/fate-of-controversial-guide-seen-as-key-to-rule-clarifying-cwa-scope/menu-id-127.html>.

³ *Draft Guidance on Identifying Waters Protected by the Clean Water Act* (May 2, 2011), available at http://water.epa.gov/lawsregs/guidance/wetlands/upload/wous_guidance_4-2011.pdf.

⁴ *Solid Waste Agency of Northern Cook County. v. U.S. Army Corps of Engineers*, 531 U.S. 159 (2001).

⁵ *Rapanos v. United States*, 547 U.S. 715 (2006).

Supreme Court made it clear that not all water bodies are subject to federal jurisdiction under the CWA. Any proposed rule should reflect this principle.

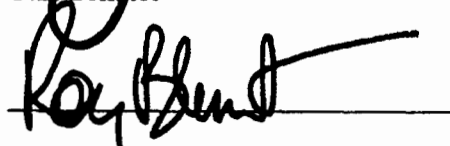
As you are aware, several recent cases indicate that the courts remain critical of EPA's efforts to expand jurisdiction or aggressively exercise the agency's enforcement powers. For example, in March 2012 the Supreme Court unanimously rejected EPA's position that a compliance order issued under the CWA was not final agency action subject to judicial review.⁶ More recently, the District Court for the Eastern District of Virginia held that EPA lacks authority under the CWA to establish a Total Maximum Daily Load (TMDL) for the flow of a non-pollutant (i.e., stormwater discharges) to regulate pollutant levels of an impaired water body.⁷ Just last month, the Supreme Court again thwarted attempts to expand jurisdiction when it held that the flow of water from an improved portion of a navigable waterway into an unimproved portion of the same waterway does not qualify as a "discharge of a pollutant" under the CWA.⁸ These cases demonstrate the readiness of the courts to ensure that EPA does not abuse the statutory and regulatory authority granted to it by Congress.

Accordingly, we request that you formally withdraw the proposed guidance and proceed with a formal rulemaking process. In conducting this process EPA should not attempt to expand its statutory authority beyond that intended by Congress. The final rule should reflect the principles promulgated in recent case law and identify limits on the agency's jurisdiction under the CWA.

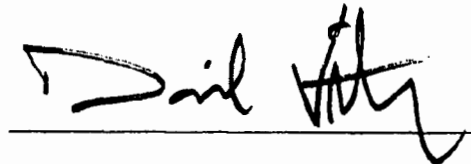
Sincerely,



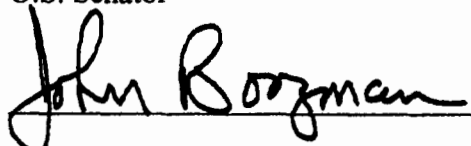
John Barrasso
U.S. Senator



Roy Blunt
U.S. Senator



David Vitter
U.S. Senator

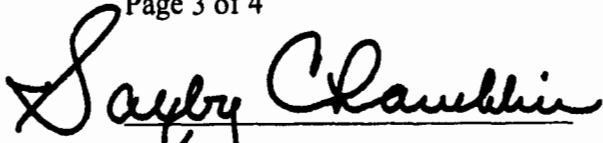


John Boozman
U.S. Senator

⁶ Sackett v. EPA, 132 S.Ct. 1367 (2012).

⁷ Virginia Dep't of Transp. v. EPA, No. 1:12-CV-775, 2013 WL 53741 (E.D.Va. 2013).

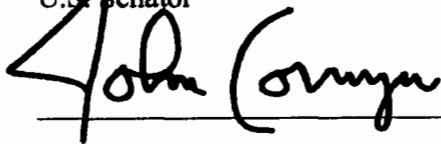
⁸ Los Angeles County Flood Control Dist. v. Natural Res. Def. Council, Inc., 133 S.Ct. 710 (2013).



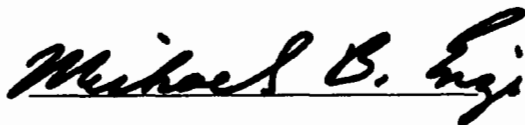
Saxby Chambliss
U.S. Senator



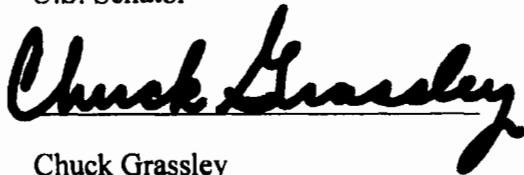
Tom Coburn
U.S. Senator



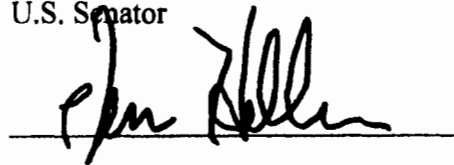
John Cornyn
U.S. Senator



Michael Enzi
U.S. Senator



Chuck Grassley
U.S. Senator



Dean Heller
U.S. Senator



James Inhofe
U.S. Senator



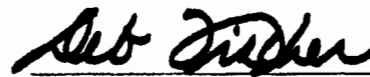
Daniel Coats
U.S. Senator



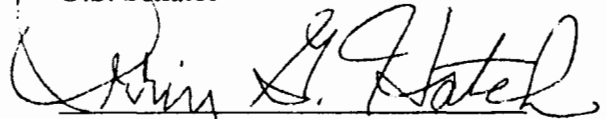
Thad Cochran
U.S. Senator



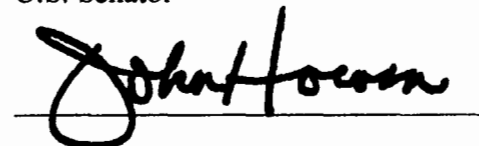
Mike Crapo
U.S. Senator



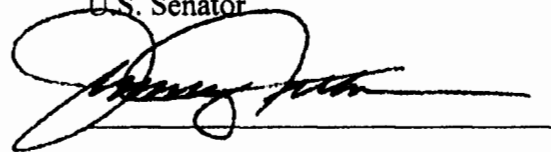
Deb Fischer
U.S. Senator



Orrin Hatch
U.S. Senator



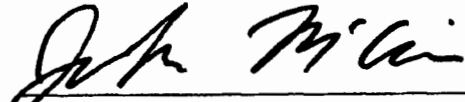
John Hoeven
U.S. Senator



Johnny Isakson
U.S. Senator



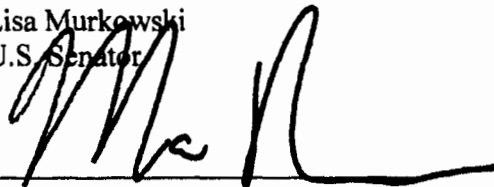
Mike Johanns
U.S. Senator



John McCain
U.S. Senator



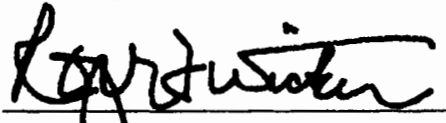
Lisa Murkowski
U.S. Senator



Marco Rubio
U.S. Senator



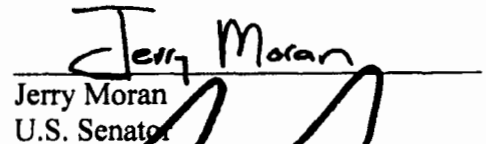
Jeff Sessions
U.S. Senator



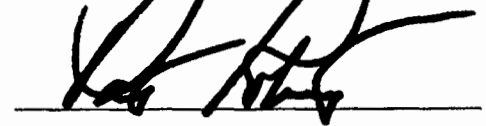
Roger Wicker
U.S. Senator



Mike Lee
U.S. Senator



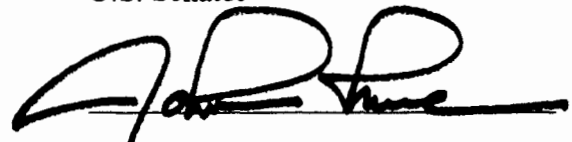
Jerry Moran
U.S. Senator



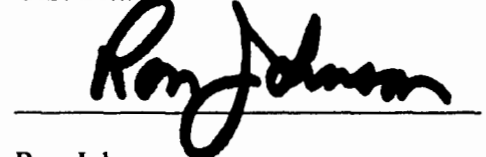
Pat Roberts
U.S. Senator



Tim Scott
U.S. Senator



John Thune
U.S. Senator



Ron Johnson
U.S. Senator



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

JUN 19 2013

OFFICE OF WATER

The Honorable Marco Rubio
United States Senate
Washington, D.C. 20510

Dear Senator Rubio:

Thank you for your April 23, 2013, letter to the U.S. Environmental Protection Agency Acting Administrator Bob Perciasepe expressing your concern regarding potential issuance of the EPA and the Department of the Army (Army) guidance clarifying the scope of the Clean Water Act (CWA) jurisdiction. I understand your interest in this important issue.

There is an urgent need to clarify the geographic scope of protections provided under the CWA. The EPA and Army issued joint guidance in 2008 to provide consistent procedures for identifying jurisdictional waters under their regulations after the Supreme Court decisions of *SWANCC* and *Rapanos*. The 2008 guidance, however, has created uncertainty, raised costs, and contributed to delays for those asking whether or not particular waters are covered by the CWA. In response to these problems, the EPA and the U.S. Army Corps of Engineers developed new guidance as a timely interim step to address the need for improved procedures. Our long-term goal is to revise our regulations to provide a more comprehensive and effective solution under the Administrative Procedures Act and consistent with the CWA and Supreme Court decisions. The agencies' guidance is now undergoing interagency review at the Office of Management and Budget. In the meantime, we are also working to prepare a joint notice of proposed rulemaking for public notice and comment. No final decisions have been made on the schedule for either issuance of final guidance or initiation of a notice and comment rulemaking process.

The agencies share your perspective regarding the importance of waters of the United States' rulemaking and agree that such rulemaking may not extend jurisdiction beyond that established by Congress under the law as clarified by Supreme Court decisions in *SWANCC* and *Rapanos*. As you correctly point out, not all waterbodies are subject to protection under the CWA. We believe, however, that the 2008 guidance is unnecessarily vague and confusing, creating avoidable problems in the process of identifying which waters are covered by the CWA. We are eager to respond to these problems in a timely, scientifically valid, and transparent process under the law.

We are pleased that the courts have consistently upheld the agencies' decisions regarding the scope of CWA jurisdiction and it is our intent to continue to implement our responsibilities in a fair, scientifically appropriate, and legally defensible manner. I would emphasize that neither of the court decisions identified in your letter, *Sackett* and *Virginia Department of Transportation*, involved a challenge to an EPA determination regarding the geographic scope of CWA protections.

Again, thank you for your letter. If you have further questions, please contact me, or your staff may call Denis Borum in the EPA's Office of Congressional and Intergovernmental Relations at (202) 564-4836.

Sincerely,

A handwritten signature in black ink, consisting of a stylized 'N' followed by a 'K' and a cursive 'S'.

Nancy K. Stoner
Acting Assistant Administrator



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

12-000-5501

MAR 13 2012

OFFICE OF
SOLID WASTE AND
EMERGENCY RESPONSE

The Honorable Marco Rubio
United States Senate
Washington, D.C. 20510

Dear Senator Rubio:

The U.S. Environmental Protection Agency's (EPA) Superfund program will be proposing to add the Fairfax St. Wood Treaters site, located in Jacksonville, Florida, to the National Priorities List (NPL) by rulemaking. In addition, the EPA is adding the Continental Cleaners site, located in Miami, Florida, to the NPL. The EPA received governor/state concurrence letters supporting the listing of these sites on the NPL. Listing on the NPL provides access to federal cleanup funding for the nation's highest priority contaminated sites.

Because the sites are located within your state, I am providing information to help in answering questions you may receive from your constituency. The information includes brief descriptions of the sites, and a general description of the NPL listing process.

If you have any questions, please contact me or your staff may contact Raquel Snyder, in the EPA's Office of Congressional and Intergovernmental Relations, at (202) 564-9586. We expect the rule to be published in the Federal Register in the next several days.

Sincerely,

A handwritten signature in black ink, reading "Mathy Stanislaus", is positioned above the typed name.

Mathy Stanislaus
Assistant Administrator

Enclosures

NATIONAL PRIORITIES LIST (NPL)

Proposed Site

March 2012

FAIRFAX ST. WOOD TREATERS | **Jacksonville, Florida**
*Duval County***📍 Site Location:**

Fairfax St. Wood Treaters is located at 2610 Fairfax Street, Jacksonville, Florida. The 12-acre property is located in a dense residential area, immediately adjacent to two elementary schools and several homes.

📖 Site History:

From 1980 to 2010, Wood Treaters, LLC pressure treated utility poles, pilings and other lumber products using the preservative chromated copper arsenate (CCA). Wood Treaters, LLC filed for bankruptcy, and by July 2010 ceased operations and abandoned the facility. Seven above ground storage tanks, in poor condition, contained high levels of arsenic, chromium and copper. In August 2010, the State of Florida Department of Environmental Protection requested the EPA's assistance in mitigating the release of hazardous substances to the environment.

📋 Site Contamination/Contaminants:

CCA is characterized by a bright green color and is composed of waterborne oxides of chromium, copper and arsenic. Wood treated with CCA drip-dried on the property, resulting in arsenic, chromium and copper contamination. During operations, some contaminated storm water flowed off the site and onto surrounding properties including a parking lot retention pond and Moncrief Creek. Wood treating operations resulted in soil, water and sediment contamination with chromium, copper and arsenic. Arsenic and chromium are known human carcinogens.

🏠 Potential Impacts on Surrounding Community/Environment:

Several nearby residential two school properties have been contaminated by releases from the site. The contamination came to be located on surrounding properties by overland storm water runoff or by wind deposition. Moncrief Creek is potentially contaminated and will be investigated during the Remedial Investigation.

🚧 Response Activities (to date):

On August 11, 2010, the EPA initiated an emergency response and removal action to secure the site and prevent further releases of hazardous substances. To date, the EPA response actions have prevented contaminated water from discharging offsite, removed water and sediment from the onsite retention pond, removed the surface soil across the entire site and removed all tanks and piping. In addition, the EPA removed contaminated soil, and the water and sediments of a retention pond, on the adjacent elementary school play ground.

📋 Need for NPL Listing:

The state referred the site to the EPA because the operator abandoned the facility. Wood Treaters, LLC did not have financial assurance to fund the cleanup of the facility. No other federal and state cleanup programs are available to remediate the site. Inclusion on the Superfund National Priorities List will allow the EPA to address subsurface soil contamination on the site, soil contamination on residential properties surrounding the site, and to determine the impacts of the site on local ground water and surface water. The EPA received a letter of support for placing this site on the NPL from the state of Florida.

[The description of the site (release) is based on information available at the time the site was evaluated with the HRS. The description may change as additional information is gathered on the sources and extent of contamination.]

For more information about the hazardous substances identified in this narrative summary, including general information regarding the effects of exposure to these substances on human health, please see the Agency for Toxic Substances and Disease Registry (ATSDR) ToxFAQs. ATSDR ToxFAQs can be found on the Internet at <http://www.atsdr.cdc.gov/toxfaq.html> or by telephone at 1-888-42-ATSDR or 1-888-422-8737.



NATIONAL PRIORITIES LIST (NPL)

Final Site

March 2012

CONTINENTAL CLEANERS | Miami, Florida Miami-Dade County

Site Location:

The Continental Cleaners site is located at 798 NW 62nd Street in the City of Miami, Miami-Dade County, Florida, and is on the southeast corner of NW 62nd Street (Martin Luther King, Jr. Boulevard) and NW 8th Avenue. The site is in the Liberty City neighborhood and it is surrounded by residential and commercial properties.

Site History:

Laundry and dry cleaning operations were conducted at the site from approximately 1967 to 2005. The facility is currently used as a pickup and drop off location for offsite dry cleaning. In the 1990s, local environmental officials found dry cleaning chemicals had been released to the ground and ground water. Numerous studies have documented tetrachloroethene (PCE), a common dry cleaning solvent and its breakdown products in the soil and ground water at the site. The facility was determined by the Florida Department of Environmental Protection (FDEP) to be ineligible to participate in the state Drycleaner Solvent Program. Subsequently, the site was referred by the FDEP to the EPA for Superfund evaluation.

Site Contamination/Contaminants:

PCE was found at high concentrations in the floor drain and in ground water at the site. Trichloroethene (TCE) and cis-1,2-dichloroethene (DCE) were also detected at concentrations two and three times the level of PCE in the groundwater. TCE and DCE are breakdown products of PCE. The ground water concentrations of these volatile organic compounds (VOCs) significantly exceed state and federal drinking water standards.

Potential Impacts on Surrounding Community/Environment:

The site is approximately half an acre. Contamination may exist beneath the building and in the back of the facility in soils down to the ground water table. The ground water is contaminated on the site, and it is likely to have migrated offsite. The aquifer beneath the site is the sole source of municipal drinking water for southeast Florida.

Response Activities (to date):

There have been a number of investigations conducted by the Miami-Dade County Department of Environmental Resources (DERM) and the FDEP. Waste discharge violations and enforcement issues were identified by the DERM. However, no cleanup activities have taken place at the site.

Need for NPL Listing:

The State of Florida referred the site to the EPA to allow for a comprehensive cleanup to address all of the human health and environmental risks posed by the site. Other federal and state cleanup programs were evaluated, but are not viable at this time. The EPA received a letter of support for placing this site on the NPL from the state.

[The description of the site (release) is based on information available at the time the site was evaluated with the HRS. The description may change as additional information is gathered on the sources and extent of contamination.]

For more information about the hazardous substances identified in this narrative summary, including general information regarding the effects of exposure to these substances on human health, please see the Agency for Toxic Substances and Disease Registry (ATSDR) ToxFAQs. ATSDR ToxFAQs can be found on the Internet at <http://www.atsdr.cdc.gov/toxfaqs.html> or by telephone at 1-888-42-ATSDR or 1-888-422-8737.

NATIONAL PRIORITIES LIST (NPL)

WHAT IS THE NPL?

The National Priorities List (NPL) is a list of national priorities among the known or threatened releases of hazardous substances throughout the United States. The list serves as an information and management tool for the Superfund cleanup process as required under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA). The NPL is intended primarily to guide EPA in determining which sites warrant further investigation to assess the nature and extent of public health and environmental risks associated with a release of hazardous substances.

There are three ways a site is eligible for the NPL:

1. Scores at least 28.50:

A site may be included on the NPL if it scores sufficiently high on the Hazard Ranking System (HRS), which EPA published as Appendix A of the National Contingency Plan. The HRS is a mathematical formula that serves as a screening device to evaluate a site's relative threat to human health or the environment. As a matter of Agency policy, those sites that score 28.50 or greater on the HRS are eligible for inclusion on the NPL. This is the most common way a site becomes eligible for the NPL.

2. State Pick:

Each state and territory may designate one top-priority site regardless of score.

3. ATSDR Health Advisory:

Certain other sites may be listed regardless of their HRS score, if all of the following conditions are met:

- a. The Agency for Toxic Substances and Disease Registry (ATSDR) of the U.S. Department of Health and Human Services has issued a health advisory that recommends removing people from the site;
- b. EPA determines that the release poses a significant threat to public health; and
- c. EPA anticipates it will be more cost-effective to use its remedial authority than to use its emergency removal authority to respond to the site.

Sites are first proposed to the NPL in the *Federal Register*. EPA then accepts public comments for 60 days about listing the sites, responds to the comments, and places those sites on the NPL that continue to meet the requirements for listing. To submit comments, visit www.regulations.gov.

Placing a site on the NPL does not assign liability to any party or to the owner of any specific property; nor does it mean that any remedial or removal action will necessarily be taken.

For more information, please visit www.epa.gov/superfund/sites/npl/.



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

12-000-6737

APR 16 2012

THE ADMINISTRATOR

The Honorable Marco Rubio
United States Senate
Washington, D.C. 20510

Dear Senator Rubio:

It is my pleasure to inform you that the U.S. Environmental Protection Agency (EPA) has recognized two of your constituents, Manitowoc Foodservice and Central Florida Energy Efficiency Alliance, as 2012 ENERGY STAR award winners. This award recognizes the leadership of these organizations in reducing greenhouse gas emissions through improved energy efficiency. The awards were presented during a ceremony on March 15, 2012, in Washington, DC.

The 2012 ENERGY STAR award winners have distinguished themselves from nearly 20,000 program partners by making a long-term commitment to energy efficiency and leading the way for others through their example. These leaders prove that climate protection efforts can be good for the environment and good for the bottom line, and they are driving market transformation through their innovative practices and significant technological advances. As a diverse set of product manufacturers, utilities, building owners and managers, retailers, and homebuilders, they represent the partners nationwide that are achieving remarkable benefits through the ENERGY STAR program.

I am pleased to report that their efforts, along with the efforts of others, have made a significant impact. The ENERGY STAR label can now be found on more than 60 types of energy-efficient products, as well as top-performing new homes, schools, commercial buildings, and industrial plants. Last year alone, ENERGY STAR helped Americans save about \$23 billion on their utility bills and reduce greenhouse gas emissions equivalent to those from 41 million vehicles.

Please help us congratulate your constituents for their achievements in improving energy performance and protecting the environment. If you or your staff have any questions or would like more information, please contact Josh Lewis in EPA's Office of Congressional and Intergovernmental Relations at (202) 564-2095.

Sincerely,

A handwritten signature in black ink, which appears to read "Lisa P. Jackson", is written over a large, stylized, circular flourish.

Lisa P. Jackson

14-001-2702

**THE WHITE HOUSE OFFICE
REFERRAL**

July 08, 2014

TO: ENVIRONMENTAL PROTECTION AGENCY

ACTION COMMENTS:

ACTION REQUESTED: DIRECT REPLY W/COPY

REFERRAL COMMENTS:

DESCRIPTION OF INCOMING:

ID: 1142909

MEDIA: LETTER

DOCUMENT DATE: June 03, 2014

TO: PRESIDENT OBAMA

FROM: THE HONORABLE MITCH MCCONNELL
UNITED STATES SENATE
WASHINGTON, DC 20510

SUBJECT: EXPRESSES CONCERN WITH THE PRESIDENT PROPOSED RULE FOR
EXISTING POWER PLANTS EMISSIONS OF GREENHOUSE GASES

COMMENTS:

**PROMPT ACTION IS ESSENTIAL – IF REQUIRED ACTION HAS NOT BEEN TAKEN WITHIN 9 WORKING DAYS OF RECEIPT,
UNLESS OTHERWISE STATED, PLEASE TELEPHONE THE UNDERSIGNED AT (202) 456-2590.**

**RETURN ORIGINAL CORRESPONDENCE, WORKSHEET AND COPY OF RESPONSE (OR DRAFT) TO: DOCUMENT TRACKING UNIT,
ROOM 562, OFFICE OF RECORDS MANAGEMENT - THE WHITE HOUSE, 20500**

**THE WHITE HOUSE
DOCUMENT MANAGEMENT AND
TRACKING WORKSHEET**



DATE RECEIVED: June 26, 2014

CASE ID: 1142909

NAME OF CORRESPONDENT: THE HONORABLE MITCH MCCONNELL

SUBJECT: EXPRESSES CONCERN WITH THE PRESIDENT PROPOSED RULE FOR EXISTING POWER PLANTS EMISSIONS OF GREENHOUSE GASES

ROUTE TO: AGENCY/OFFICE	(STAFF NAME)	ACTION		DISPOSITION	
		CODE	DATE	RESPONSE	DATE COMPLETED
LEGISLATIVE AFFAIRS	KATIE FALLON	ORG	06/27/2014		

ACTION COMMENTS:

✓ EPA

R

JUL 08 2014

ACTION COMMENTS:

ACTION COMMENTS:

ACTION COMMENTS:

ACTION COMMENTS:

COMMENTS: 41 ADDL SIGNEES

MEDIA TYPE: LETTER

USER CODE:

ACTION CODES		DISPOSITION	
A = APPROPRIATE ACTION B = RESEARCH AND REPORT BACK D = DRAFT RESPONSE I = INFO COPY/NO ACT NECESSARY R = DIRECT REPLY W/ COPY ORG = ORIGINATING OFFICE	TYPE RESPONSE	DISPOSITION CODES	COMPLETED DATE
	INITIALS OF SIGNER (W.H. STAFF) NRN = NO RESPONSE NEEDED OTBE = OVERTAKEN BY EVENTS	A = ANSWERED OR ACKNOWLEDGED C = CLOSED X = INTERIM REPLY	DATE OF ACKNOWLEDGEMENT OR CLOSEOUT DATE (MM/DD/YY)

KEEP THIS WORKSHEET ATTACHED TO THE ORIGINAL INCOMING LETTER AT ALL TIMES

REFER QUESTIONS TO DOCUMENT TRACKING UNIT (202)-456-2590

SEND ROUTING UPDATES AND COMPLETED RECORDS TO OFFICE OF RECORDS MANAGEMENT - DOCUMENT TRACKING UNIT ROOM 662, EEOB.

Scanned by
ORM

United States Senate
WASHINGTON, DC 20510

June 3, 2014

The Honorable Barack Obama
President of the United States
The White House
1600 Pennsylvania Avenue NW
Washington, DC 20500

Dear President Obama:

We write to express our concerns with your proposed rule for existing power plants emissions of greenhouse gases.

Our primary concern is that the rule as proposed will result in significant electricity rate increases and additional energy costs for consumers. These costs will, as always, fall most heavily on the elderly, the poor, and those on fixed incomes. In addition, these costs will damage families, businesses, and local institutions such as hospitals and schools. The U.S. Chamber of Commerce recently unveiled a study indicating that a plan of this type would increase America's electricity bills, decrease a family's disposable income, and result in job losses.

This proposed rule continues your Administration's effort to ensure that American families and businesses will pay more for electricity, an important goal emphasized during your initial campaign for President, and suffer reduced reliability as well. Removing coal as a power source from the generation portfolio – which is a direct and intended consequence of your Administration's rule – unnecessarily reduces reliability and market flexibility while increasing costs. As you are aware, low-income households spend a greater share of their paychecks on electricity and will bear the brunt of rate increases.

In your haste to drive coal and eventually natural gas from the generation portfolio, your Administration has disregarded whether EPA even has the legal authority under the Clean Air Act to move forward with this proposal, the dubious benefit of prematurely forcing the closure of even more base load power generation from America's electric generating fleet, and the obvious signal this past winter's cold snap sent regarding our continued need for reliable, affordable coal-fired generation.

In fact, your existing source proposal goes beyond the plain reading of the Clean Air Act, and it, like your Climate Action Plan, includes failed elements from the cap-and-trade program rejected by the United States Senate. You need only look back to June 2008 for a repudiation of that type of approach by the United States Senate. On June 2, 2008, the Senate debate began on S. 3036,

the Climate Security Act, a cap-and-trade bill, and ended in defeat on June 6, when the Senate refused to invoke cloture. Since that time, Majority Leader Harry Reid has avoided votes that would provide a record of the Senate's ongoing and consistent disapproval of your unilateral action.

Including emissions sources beyond the power plant fence as opposed to just those emissions sources inside the power plant fence creates a cap-and-trade program. As you noted in the wake of the initial failure of cap-and-trade, "There are many ways to skin a cat," and your Administration seems determined to accomplish administratively what they failed to achieve through the legislative process.

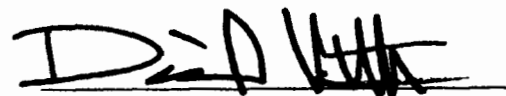
At a time when manufacturers are moving production from overseas to the U.S. and investing billions of dollars in the process, we are very concerned that an Administration with a poor management record decided to embark on a plan that will result in energy rationing, pitting power plants against refineries, chemical plants, and paper mills, for the ability to operate when coming up against EPA's emissions requirements. A management decision that eliminates access to abundant, affordable power puts U.S. manufacturing at a competitive disadvantage.

Moreover, there is substantial reason and historical experience to justify our belief that at the end of the rulemaking process, EPA will use its authority to constrain State preferences with respect to program design, potentially going so far as dictating policies that restrict when American families can do the laundry or run the air conditioning. Such impositions practically guarantee that costs, which will of course be passed along to ratepayers, will be maximized, the size and scope of the federal government will expand, and the role of the States in our system of cooperative federalism will continue to diminish.

Finally, we are concerned that there is almost no assessment of costs that will be imposed by this program. Again, if history is any guide, the costs imposed on U.S. businesses and families will be significant and far exceed EPA's own estimate. More disturbingly, the benefits that may result from this unilateral action – as measured by reductions in global average temperature or reduced sea level rise, or increase in sea ice, or any other measurement related to climate change that you choose – will be essentially zero. We know this because in 2009, your former EPA Administrator testified that "U.S. action alone would not impact world CO2 levels." If these assumptions are incorrect, please don't hesitate to provide us with the data that proves otherwise.

We strongly urge you to withdraw this rule.

Sincerely,

Handwritten signature of Mitch McConnell in black ink, with a horizontal line underneath.Handwritten signature of D. A. Vitter in black ink, with a horizontal line underneath.

John Bozman
John Thune
Lloyd Gustafson
Ray Bend

Art Ziegen
Orvin Hatch
Ray Johnson

Jeff Lemons
Mike
Bill Miller
John Hanna

John Cornyn
Mike Cryer
Sam McChesney

Jeff Lemons
John Barrasso
Pat Rooney

Michael B. Enzi

Ileana Kim
Chuck Grassley

MA
John
Richard Shelby

Lindsay GRADMAN

Lawrence Alexander

William J. E.

Thad Cochran

Pat Roberts
7-18

Jerry Moran

Don Coats

Amthud

Jim S.

John F. Hall

Thad Portman

~~Thad Portman~~

Sayby Chaubkin

Tommy Dwyer
John Hall

Eades, Cassandra

From: Louviere, Rebecca (EPW) <Rebecca_Louviere@epw.senate.gov>
Sent: Wednesday, July 23, 2014 9:24 AM
To: Eades, Cassandra
Subject: 41 Senators Urge President Obama to Withdraw Cap-and-Trade Rule

Hi Cassandra,

Per our phone conversation, here are the 41 senators who signed the letter to President Obama on June 3, 2014.

Sens. Vitter, McConnell, James Inhofe (R-Okla.), John Barrasso (R-Wyo.), Jeff Sessions (R-Ala.), Mike Crapo (R-Idaho), Roger Wicker (R-Miss.), John Boozman (R-Ark.), Deb Fischer (R-Neb.), John Cornyn (R-Texas), Roy Blunt (R-Mo.), John Thune (R-S.D.), Orrin Hatch (R-Utah), Pat Toomey (R-Pa.), Ron Johnson (R-Wis.), Mike Enzi (R-Wyo.), Mark Kirk (R-Ill.), Tom Coburn (R-Okla.), Mike Johanns (R-Neb.), Chuck Grassley (R-Iowa), James Risch (R-Idaho), Marco Rubio (R-Fla.), Johnny Isakson (R-Ga.), John Hoeven (R-N.D.), Richard Shelby (R-Ala.), Lindsey Graham (R-S.C.), Lamar Alexander (R-Tenn.), Mike Lee (R-Utah), Pat Roberts (R-Kan.), Dean Heller (R-Nev.), Rand Paul (R-Ky.), Jerry Moran (R-Kan.), Tim Scott (R-S.C.), Ted Cruz (R-Texas), Dan Coats (R-Ind.), Lisa Murkowski (R-Alaska), Thad Cochran (R-Miss.), Jeff Flake (R-Ariz.), Richard Burr (R-N.C.), Saxby Chambliss (R-Ga.), and Rob Portman (R-Ohio).

Here is a link to the [press release](#) which contains a link to the letter. Please let me know if you have any further questions.

Thank you,

Rebecca

Rebecca Louviere
Republican Research Staff
U.S. Senate Committee on
Environment and Public Works
456 Dirksen Senate Office Building
☎ (202) 224-6176
📠 (202) 224-5167
🌐 www.epw.senate.gov



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

SEP 18 2014

OFFICE OF
AIR AND RADIATION

The Honorable Marco Rubio
United States Senate
Washington, D.C. 20510

Dear Senator Rubio:

Thank you for your letter of June 3, 2014, to President Obama regarding the Clean Power Plan for Existing Power Plants that was signed by the U.S. Environmental Protection Agency Administrator Gina McCarthy on June 2, 2014, and published in the *Federal Register* on June 18, 2014. The President asked that I respond on his behalf.

Climate change induced by human activities is one of the greatest challenges of our time. It already threatens human health and welfare and our economic well-being, and if left unchecked, it will have devastating impacts on the United States and the planet. Power plants are the largest source of carbon dioxide emissions in the United States, accounting for roughly one-third of all domestic greenhouse gas emissions.

The Clean Power Plan aims to cut energy waste and leverage cleaner energy sources by doing two things. First, it uses a national framework to set achievable state-specific goals to cut carbon pollution per megawatt hour of electricity generated. Second, it empowers the states to chart their own paths to meet their goals. The proposal builds on what states, cities and businesses around the country are already doing to reduce carbon pollution, and when fully implemented in 2030, carbon emissions will be reduced by approximately 30 percent from the power sector across the United States when compared with 2005 levels. In addition, we estimate the proposal will cut the pollution that causes smog and soot by 25 percent, avoiding up to 100,000 asthma attacks and 2,100 heart attacks by 2020.

Before issuing this proposal, the EPA heard from more than 300 stakeholder groups from around the country to learn more about what programs are already working to reduce carbon pollution. These meetings, with states, utilities, labor unions, nongovernmental organizations, consumer groups, industry, and others, reaffirmed that states are leading the way. The Clean Air Act provides the tools to build on these state actions in ways that will achieve meaningful reductions and recognizes that the way we generate power in this country is diverse, complex and interconnected.

We appreciate your views about the effects of the proposal. As you know, we are currently seeking public comment on the proposal, and we encourage you and all interested parties to provide us with detailed comments on all aspects of the proposed rule. The public comment period remains open and all comments submitted, regardless of method of submittal, will receive the same consideration. The public comment period will remain open for 120 days, until October 16, 2014. We have submitted your letter to the rulemaking docket, but additional comments can be submitted via any one of these methods:

- Federal eRulemaking portal: <http://www.regulations.gov>. Follow the online instructions for submitting comments.
- E-mail: A-and-R-Docket@epa.gov. Include docket ID number HQ-OAR-2013-0602 in the subject line of the message.
- Fax: Fax your comments to: 202-566-9744. Include docket ID number HQ-OAR-2013-0602 on the cover page.
- Mail: Environmental Protection Agency, EPA Docket Center (EPA/DC), Mailcode 28221T, Attention Docket ID No. OAR-2013-0602, 1200 Pennsylvania Avenue, NW, Washington, DC 20460.
- Hand Delivery or Courier: Deliver your comments to: EPA Docket Center, Room 3334, 1301 Constitution Ave., NW, Washington, DC, 20460. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Again, thank you for your letter. If you have further questions, please contact me or your staff may contact Kevin Bailey in the EPA's Office of Congressional and Intergovernmental Relations at bailey.kevinj@epa.gov or at (202) 564-2998.

Sincerely,



Janet G. McCabe
Acting Assistant Administrator

United States Senate
WASHINGTON, DC 20510

15-000-1173

October 23, 2014

The Honorable Gina McCarthy
Administrator
Environmental Protection Agency
1300 Pennsylvania Avenue, NW
Washington, DC 20460

The Honorable John M. McHugh
Secretary of the Army
101 Army Pentagon
Washington, D.C. 20310-0101

Re: Proposed Rule to Define "Waters of the United States"
Docket ID No. EPA-HW-OW-2011-0880

Dear Administrator McCarthy and Secretary McHugh,

Despite numerous requests for the Environmental Protection Agency (EPA) and the Army Corps of Engineers (Corps) to withdraw the proposed "waters of the United States" rule, the Administration has shown it intends to pursue this unprecedented executive overreach, regardless of the consequences to the economy and to Americans' property rights. The proposed rule would provide EPA and the Corps (as well as litigious environmental groups) with the power to dictate the land use decisions of homeowners, small businesses, and local communities throughout the United States. With few exceptions, it would give the agencies virtually unlimited regulatory authority over all state and local waters, no matter how remote or isolated such waters may be from truly navigable waters. The proposed rule thus usurps legislative authority and Congress's decision to predicate Clean Water Act jurisdiction on the law's foundational term, "navigable waters."

Because the proposed "waters of the United States" rule displaces state and local officials in their primary role in environmental protection, it is certain to have a damaging effect on economic growth. Increased permitting costs, abandoned development projects, and the prospect of litigation resulting from the proposed rule will slow job-creation across the country. Similar concerns led the Small Business Administration's Office of Advocacy (SBA) to recently call for the withdrawal of the proposed rule. As SBA observed, the proposed rule will result in a "direct and potentially costly impact on small businesses," and the "[t]he limited economic analysis which [EPA and the Corps] submitted with the rule provides ample evidence of a potentially significant economic impact."¹ We join SBA and continue to urge EPA and the Corps to withdraw the proposed rule.

Undoubtedly, there is a disconnect between regulatory reality and the Administration's utopian view of the proposed "waters of the United States" rule. We believe this reflects the EPA's and the Corps' refusal to listen to the thousands of Americans who have asked that the proposed rule be immediately withdrawn. Indeed, there have been several examples of bias against the proposed rule's critics. For the record, we note that the Administration has manipulated this rulemaking in ways that appear to be designed to prejudge the outcome:

¹ Letter from SBA to the Hon. Gina McCarthy and Maj. Gen. John Peabody re: Definition of "Waters of the United States" Under the Clean Water Act (Oct. 1, 2014), available at http://www.sba.gov/sites/default/files/Final_WOTUS%20Comment%20Letter.pdf.

Bias Factor #1: The Obama Administration Claims That the Proposed “Waters of the United States” Rule Responds to Prior Requests for a Clean Water Act Rulemaking.

EPA has repeatedly claimed that the proposed “waters of the United States” rule responds to various requests for the agency to clarify the scope of Clean Water Act jurisdiction. Likewise, the Administration stated last month that the proposed rule “is responsive to calls for rulemaking from Congress, industry, and community stakeholders as well as decisions of the U.S. Supreme Court.”²

Such assertions are wholly misleading. A request for a regulatory clarification does not provide a license to run roughshod over the property rights of millions of Americans. Yet the Obama Administration has used prior rulemaking requests as an excuse to unilaterally advance a regulatory agenda that defies the jurisdictional limits established by Congress when it enacted the Clean Water Act in 1972.

In fact, the proposed rule would harm the very landowners, small businesses, and municipalities that expressed interest in working with EPA and the Corps to address Clean Water Act jurisdictional issues. Thus, rather than respond to requests for a rulemaking, the proposed rule serves as an example for why so few Americans trust EPA.

Bias Factor #2: The Obama Administration Insinuates That Opposition to the Proposed Rule Is Equivalent to Opposition to Clean Water.

When EPA Administrator Gina McCarthy announced the proposed “waters of the United States” rule last March, she professed that the proposed rule “clarifies which waters are protected, and which waters are not.”³ Similarly, EPA’s Office of Water has suggested that those who “choose clean water” should support the proposed rule.⁴

These statements insinuate that the proposed rule’s critics oppose clean water. This is an insulting ploy that belies the numerous efforts made in recent years by agriculture, industry, and local officials to improve water quality throughout the country. It ignores the fact that nonfederal waterbodies are subject to local and state water quality regulations. Moreover, the Clean Water Act’s emphasis that “[i]t is the policy of the Congress to recognize, preserve, and protect *the primary responsibilities and rights of States* to prevent, reduce, and eliminate pollution” negates the canard that choosing clean water requires acceding to unlimited federal regulatory authority.⁵

² Executive Office of the President, Office of Management and Budget, Statement of Administration Policy re: H.R. 5078 (Sept. 8, 2014).

³ U.S. Environmental Protection Agency, *EPA Administrator Gina McCarthy Gives an Overview of EPA’s Clean Water Act Rule Proposal*, YOUTUBE (Mar. 25, 2014), <http://www.youtube.com/watch?v=ow-n8zZuDYc>.

⁴ Travis Loop, *Do You Choose Clean Water?*, GREENVERSATIONS: AN OFFICIAL BLOG OF THE U.S. EPA Sept. 9, 2014), <http://blog.epa.gov/blog/2014/09/do-you-choose-clean-water/>.

⁵ Federal Water Pollution Control Act § 101, 33 U.S.C. § 1251 (emphasis added).

Bias Factor #3: EPA Has Attempted to Delegitimize Questions and Concerns Surrounding the Proposed Rule.

Administrator McCarthy has described certain questions regarding the proposed rule as “ludicrous” and “silly.”⁶ Stakeholders have also observed how EPA officials have responded to concerns over the proposed rule with misrepresentations and a “knock on their intelligence.”⁷

EPA’s disparaging of the proposed rule’s critics serves no one. If EPA believes concerns with the proposed rule are unwarranted, the appropriate course of action would be for the agency to respond formally in the context of the notice and comment procedures accompanying the current rulemaking. Belittling the proposal’s critics only furthers the impression that EPA has predetermined the outcome of the “waters of the United States” rulemaking.

Bias Factor #4: EPA and the Corps Have Blatantly Misrepresented the Impacts of Increased Clean Water Act Jurisdiction.

EPA and the Corps have attempted to downplay the substantial outcry over the proposed “waters of the United States” rule as well as the prospect of federalizing thousands of ditches, ponds, streams, and other waterbodies. They have done so by claiming that the impacts associated with increased Clean Water Act jurisdiction are insignificant.

For example, EPA claims the proposed rule “would not infringe on private property rights,” and that the Clean Water Act “is not a barrier to economic development.”⁸ The Corps has also stated that “when privately-owned aquatic areas are subject to Clean Water Act jurisdiction . . . [that] results in little or no interference with the landowner’s use of his or her land.”⁹

These assertions strain credulity. Given the history of regulatory and land use issues associated with the Clean Water Act (including numerous congressional hearings, Supreme Court cases, and real world examples of costs and hardship resulting from affirmative jurisdictional determinations), it is astonishing that any federal agency would claim that a designation of private property as “waters of the United States” does not affect the landowner’s property rights.

⁶ Chris Adams, *EPA Sets Out to Explain Water Rule That’s Riled U.S. Farm Interests*, NEWS & OBSERVER (July 9, 2014), <http://www.newsobserver.com/2014/07/09/3995009/epa-sets-out-to-explain-water.html>.

⁷ Letter from J. Mark Ward, Senior Policy Analyst and General Counsel, Utah Assoc. of Counties, to Gina McCarthy and Bob Perciasepe, U.S. Environmental Protection Agency (July 18, 2014), available at <http://www.kfb.org/Assets/uploads/images/capitolgovernment/utahassocofcountiesepa71814.pdf>.

⁸ U.S. Environmental Protection Agency, *Facts About the Waters of the U.S. Proposal*, http://www2.epa.gov/sites/production/files/2014-09/documents/facts_about_wotus.pdf.

⁹ *Finding Cooperative Solutions to Environmental Concerns with the Conowingo Dam to Improve the Health of the Chesapeake Bay: Hearing Before the Subcomm. on Water and Wildlife of the S. Comm. on Environment & Public Works*, 113 Cong. 19 (2014) (Corps response to question for the record, on file with Senator David Vitter).

That such statements have come from EPA and the Corps suggests that the agencies either don't appreciate the real-world impacts of the law they're charged with administering, or they are intentionally trying to minimize the effect of the proposed rule. It is likewise not surprising that SBA, an expert agency charged with representing the views of small entities before federal agencies and Congress, has also critiqued the manner in which EPA and the Corps have estimated the proposed rule's impacts.¹⁰

Bias Factor #5: EPA's Social Media Advocacy in Favor of the Proposed "Waters of the United States" Rule Prejudices the Rulemaking Process.

EPA staff are asking the public to influence the agency's view of the proposed "waters of the United States" rule. In fact, the Twitter account for EPA's Office of Water is now essentially a lobbyist for the proposed rule. A few months ago, EPA established a website called "Ditch the Myth," which declares that the proposed rule "clarifies protection under the Clean Water Act for streams and wetlands that form the foundation of the nation's water resources."¹¹ The agency has now gone so far as to solicit others to seek to influence EPA regarding the proposed rule, urging social media users to "show their support for clean water and the agency's proposal to protect it."¹² These actions raise serious questions about compliance with the Anti-Lobbying Act.¹³

The integrity of the rulemaking process is in jeopardy, if not already tainted. EPA's social media advocacy removes any pretense that the agency will act as a fair and neutral arbiter during the rulemaking. Why should any landowner believe that EPA will seriously and meaningfully examine adverse comments regarding the proposed rule's impact on ditches, for example, when the agency has already pronounced that the proposed rule "reduces regulation of ditches"?¹⁴ Why should state officials believe that their concerns with the proposed rule will be fully considered, when EPA has already determined that the proposed rule "fully preserves and respects the effective federal-state partnership . . . under the Clean Water Act"?¹⁵

EPA's social media advocacy is a firm indicator that adverse comments will receive scant attention during the rulemaking period. We question whether the "waters of the United States" rulemaking can be conducted in accordance with the Administrative Procedure Act and its objective that agencies "benefit from the expertise and input of the parties

¹⁰ See SBA Letter, *supra* n.1.

¹¹ DITCH THE MYTH, <http://www2.epa.gov/uswaters/ditch-myth>.

¹² U.S. Environmental Protection Agency, *Water Headlines for the Week of September 9, 2014*, <http://water.epa.gov/aboutow/ownews/waterheadlines/May-6-2014-Issue.cfm>.

¹³ See 18 U.S.C. § 1913 (prohibiting the use of appropriated federal funds for the "personal service, advertisement, telegram, telephone, letter, printed or written matter, or other device, intended or designed to influence in any manner a Member of Congress, a jurisdiction, or an official of any government, to favor, adopt, or oppose, by vote or otherwise, any legislation, law, ratification, policy, or appropriation").

¹⁴ See DITCH THE MYTH, *supra* note 11.

¹⁵ See *id.*

who file comments with regard to [a] proposed rule" and "maintain a flexible and open minded attitude towards its own rules."¹⁶

We are dismayed that the Administration has failed to adhere to its impartial obligations under the law. Moreover, this bias has been reflected in comments from NGOs as well. Based on similar statements from groups such as Organizing for Action, Natural Resources Defense Council, and Clean Water Action, it is as though the Administration and its environmentalist allies are of one mindset, eager to paint the proposed rule's critics as anything other than concerned citizens.

At the same time, although the above groups are entitled to have a misguided and flawed perspective on the proposed "waters of the United States" rule, the Administration owes the American people a higher level of discourse. To date, however, this rulemaking has been plagued by administrative bias and prejudicial grandstanding. It is therefore incumbent on EPA and Corps to reverse course, withdraw the proposed rule, and commit to working more cooperatively with interested stakeholders in future regulatory proceedings.

Sincerely,

John Barrasso

7-18

Michael M. Conell

Pat Roberts

Dan Velt

Mike Enzi

Robert W. Miller Mike Crapo

¹⁶ *McClouth Steel Prod. Corp. v. Thomas*, 838 F.2d 1317, 1325 (D.C. Cir. 1988) (interpreting 5 U.S.C. § 553; internal quotations omitted). See also Letter from Waters Advocacy Coalition to EPA Administrator Gina McCarthy and Secretary of the Army John M. McHugh re: Proposed Rule to Define "Waters of the United States" (Sept. 29, 2014) ("The [Administrative Procedure Act] does not allow [EPA and the Corps] to keep altering the regulatory landscape throughout the rulemaking process. Indeed, the public cannot be expected to provide meaningful comment on a moving target."), available at <http://www.fb.org/tmp/uploads/wacletter092914.pdf>.

Chuck Grassley Orin Hatch

John Boozman Wainwright

John Cornyn Tommy Davis

Jeff Sam McCort

Marco Raymond
Marco Rubio

Jerry Moran Rob Fieber

Mike Johanns Jim Kirk

Rand Paul Jeff Sessions

United States Senate
SENATE STEERING COMMITTEE

14-000-8057
—

April 3, 2014

The Honorable Gina McCarthy
Administrator
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, NW
Washington, D.C. 20460

Dear Administrator McCarthy:

We write to you today regarding our concerns about the Environmental Protection Agency's (EPA) proposed rule to significantly expand its permitting authority over American farmers, construction workers, miners, manufacturers and private landowners, among others, by unilaterally changing the definition of "waters of the United States" under the Clean Water Act. We believe that this proposal will negatively impact economic growth by adding an additional layer of red tape to countless activities that are already sufficiently regulated by state and local governments.

This proposed rule will do little to clarify the ambiguities of Clean Water Act regulation. In fact, the agency's proposed interpretation of "significant nexus" is vague enough to allow EPA to assert its jurisdiction over waters not previously regulated, rather than to curtail its jurisdiction, as the agency suggests. Furthermore, the rule continues to incorporate the Kennedy "sufficient nexus" test that arose out of *Rapanos v. United States* (547 U.S. 715 (2006)) without meaningfully addressing the Scalia test that also arose out of that ruling. Specifically, Justice Scalia called for jurisdictional waters to mean only *relatively permanent, standing or flowing bodies of water*, such as streams, rivers, lakes, and other bodies of water "forming geographic features."¹ This definition leads him to exclude "channels containing merely intermittent or ephemeral flow."² We feel there is no justification for EPA's failure to respond in detail to the equally important interpretation put forth by Justice Scalia.

We also take issue with EPA's reckless disregard for the science that will apparently underpin this ruling. The report, titled *Connectivity of Streams and Wetlands to Downstream Waters: A Review and Synthesis of the Scientific Evidence*, has not been finalized, and Science Advisory Board peer review for the report is not yet complete. For EPA to propose a rule without

¹ 547 U.S. at 732-33, *emphasis added*.


² *Id.* At 733-34.

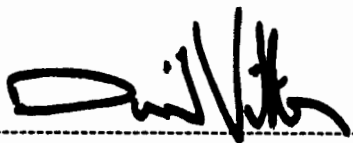
the supposed foundational scientific document firmly in place both violates the spirit of the Administrative Procedures Act, as well as OMB and agency circulars. It is our belief that EPA should withdraw this proposed ruling until such time as the Science Advisory Board completes its review of the *Report* and the *Report* is finalized. Failure to do so puts the legitimacy of the *Report*, and thus, the underlying science of the rule, in doubt, and creates the impression that the EPA intends to finalize this rule on its own whims, rather than on the validity of the science.

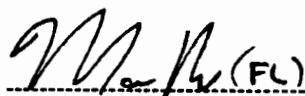
Finally, we understand that EPA is currently soliciting comments from the public on this proposal. Given the serious impact that this proposal will have on our constituents, if enacted, we request that you give all due consideration to the correspondence that you receive and extend the comment period to the full 180 days as provided by current law.

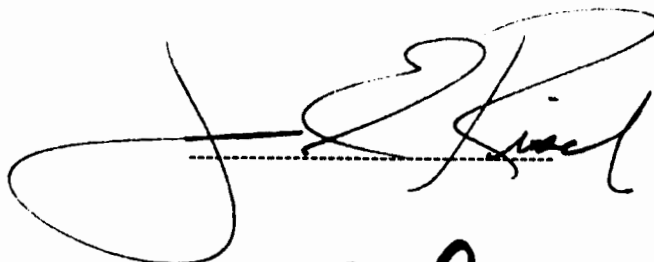
We appreciate your prompt attention to this matter.

Sincerely,





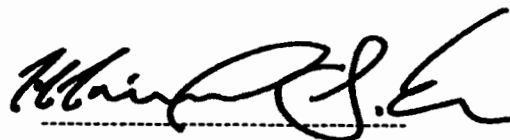












John Cornyn

Mike Enzi

Bob Dicker

Jeff Sessions

Ron Johnson

Tim W. Scott

Sally Clark



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

NOV 14 2014

OFFICE OF WATER

The Honorable Marco Rubio
United States Senate
Washington, D.C. 20510

Dear Senator Rubio:

Thank you for your April 3, 2014, letter to the U.S. Environmental Protection Agency regarding the U.S. Department of the Army's and the EPA's proposed rulemaking to define the scope of the Clean Water Act consistent with science and the decisions of the Supreme Court. The agencies' current notice and comment rulemaking process is among the most important actions we have underway to ensure reliable sources of clean water on which Americans depend for public health, a growing economy, jobs, and a healthy environment.

I appreciate your concern regarding the importance of working effectively with the public as the rulemaking process moves forward. The agencies are actively working to respond to this critical issue. In order to afford the public greater opportunity to benefit from the EPA Science Advisory Board's reports on the proposed jurisdictional rule and on the EPA's draft scientific report, "Connectivity of Streams and Wetlands to Downstream Waters: A Review and Synthesis of the Scientific Evidence," and to respond to requests from the public for additional time to provide comments on the proposed rule, the agencies extended the public comment period on the proposed rule to November 14, 2014.

Your letter expresses concerns regarding how the proposed rule incorporates decisions of the Supreme Court. The agencies based their proposed rule on the text of the Clean Water Act and relevant Supreme Court decisions on this important issue. As you note, the proposed rule is based significantly on these Supreme Court decisions, including Justice Kennedy's opinion in *Rapanos v. United States*, 547 U.S. 715 (2006), which lays out a "significant nexus" test for Clean Water Act jurisdiction. The agencies' proposed rule includes a proposed definition for "significant nexus," on which the agencies are seeking comments.

During the public comment period, the agencies are meeting with stakeholders across the country to facilitate their input on the proposed rule. We are talking with a broad range of interested groups including farmers, businesses, states and local governments, water users, energy companies, coal and mineral mining groups, and conservation interests. The EPA recently conducted a second small business roundtable to facilitate input from the small business community, which featured more than 20 participants that included small government jurisdictions as well as construction and development, agricultural, and mining interests. Since releasing the proposal in March, the EPA and the Corps have conducted unprecedented outreach to a wide range of stakeholders, holding nearly 400 meetings all across the country to offer information, listen to concerns, and answer questions. The agencies recently completed a review by the Science Advisory Board on the scientific basis of the proposed rule and will ensure the final rule effectively reflects its technical recommendations. These actions represent the

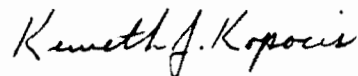
agencies' commitment to provide a transparent and effective opportunity for all interested Americans to participate in the rulemaking process.

It is important to emphasize that the proposed rule would reduce the scope of waters protected under the Clean Water Act compared to waters covered during the 1970s, 80s, and 90s to conform to decisions of the Supreme Court. The rule would limit Clean Water Act jurisdiction only to those types of waters that have a significant effect on downstream traditional navigable waters - not just any hydrologic connection. It would improve efficiency, clarity, and predictability for all landowners, including the nation's farmers, as well as permit applicants, while maintaining all current exemptions and protecting public health, water quality, and the environment. It uses the law and sound, peer-reviewed science as its cornerstones.

America thrives on clean water. Clean water is vital for the success of the nation's businesses, agriculture, energy development, and the health of our communities. We are eager to define the scope of the Clean Water Act so that it achieves the goals of protecting clean water and public health, and promoting jobs and the economy.

Thank you again for your letter. We look forward to working with Congress as our Clean Water Act rulemaking effort moves forward. Please contact me if you have additional questions on this issue, or your staff may contact Denis Borum in the EPA's Office of Congressional and Intergovernmental Relations at borum.denis@epa.gov or (202) 564-4836.

Sincerely,

A handwritten signature in black ink that reads "Kenneth J. Kopocis". The signature is written in a cursive style with a large, stylized 'K'.

Kenneth J. Kopocis
Deputy Assistant Administrator

United States Senate

WASHINGTON, DC 20510

11-002-0094

November 30, 2011

**The Honorable Lisa Jackson
Administrator
Environmental Protection Agency
1200 Pennsylvania Avenue, N.W.
Washington, D.C. 20460**

Dear Administrator Jackson:

The United States and Canada are committed to ensuring positive health benefits for North Americans through a reduction in sulfur content in fuel. This commitment forms the basis for their Emissions Control Area (ECA) application to the International Maritime Organization under the International Convention for the Prevention of Pollution from Ships (MARPOL) Annex VI Treaty.

We support the goal of protecting public health. We understand that the Environmental Protection Agency (EPA), in conjunction with the maritime industry, has been examining the weighted averaging of emissions as a comparable means of achieving the public health and environmental benefits of the ECA. We endorse this approach and continued dialogue, which would allow industry to utilize a recognized scientific means of measuring emissions. As the EPA continues to review the air quality modeling assumptions, it is important to provide consistent protections for similar shoreside locations and population densities.

The EPA has recognized the use of exhaust gas scrubbing as an equivalent means of achieving similar environmental and public health benefits to utilizing low sulfur fuels. However, the agency has not yet recognized emissions averaging as an equivalent means of achieving the same results. Averaging, trading, and banking programs are being widely used for land-based sources of particulate matter and sulfur oxide emissions.

As members of Congress who represent communities dependent upon maritime commerce for their livelihood, we urge the EPA to exercise flexibility in determining equivalencies for compliance with the ECA, and in particular, to favorably consider

The Honorable Lisa Jackson

November 29, 2011

Page 2

weighted averaging, and to recognize those equivalency determinations that other parties to MARPOL Annex VI have allowed. Within applicable rules and regulations, we would appreciate your full and fair consideration.

Sincerely,



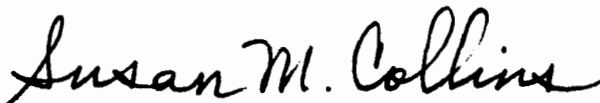
DANIEL K. INOUE
United States Senator



United States Senator



United States Senator



United States Senator



United States Senator



United States Senator

United States Senator

United States Senator

United States Senator



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

FEB - 6 2012

OFFICE OF
AIR AND RADIATION

The Honorable Marco Rubio
United States Senate
Washington, D.C. 20510

Dear Senator Rubio:

Thank you for your letter to Administrator Lisa Jackson dated November 30, 2011. In your letter, you and your colleagues urge the U.S. Environmental Protection Agency to be flexible in considering equivalent compliance approaches for ships operating in the North American Emission Control Area (ECA), and in particular, to favorably consider weighted emission averaging.

As a matter of practice, we are generally supportive of ideas that will reduce compliance costs while providing equivalent emission reductions. For example, one of the prominent technologies investigated as an equivalency for low sulfur fuel is the use of exhaust gas cleaning systems, also known as oxides of sulfur (SOx) scrubbers. As noted in your letter, we support the use of SOx scrubbers as a compliance alternative to operating on lower sulfur fuel.

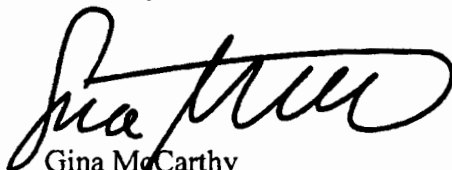
We have had several meetings with the Cruise Lines Industry Association (CLIA) who approached us with their thoughts on equivalency compliance approaches, including a concept for population-weighted emission averaging. It should be noted that population-weighting would be a significant departure from the averaging, banking, and trading programs currently used by the EPA. Under a traditional averaging approach, each ton of emissions increased from one source is offset with a full ton of emissions reduction from another source. Under a population-weighted emission averaging approach, one ton of emissions increased in one location could be offset with a decrease of much less than one ton of emissions in another location with a higher population density. In this way, weighted averaging provides a direct incentive to increase emissions when operating near communities with lower populations. For example, small emission reductions near Seattle and Vancouver could be used to offset much larger emission increases in Alaska.

We expressed to CLIA our concern that population-weighted averaging would result in a disproportionate burden of environmental harms and risks for citizens in different communities, depending on their population density. An approach trading off anticipated benefits in less populated areas raises Environmental Justice issues in that it could adversely affect under-represented communities in rural areas such as native Alaskan tribal nations. In addition, we expressed our concern to CLIA that population-weighted averaging would result in a net increase in tons of emissions of sulfur oxides, particulate matter, and air toxics (including heavy metals) in the ECA. This net increase in emissions would be detrimental to the affected ecosystems inland of the ECA because of impacts on visibility, ecosystem health, tree biomass production, acidification, and other issues.

We will continue our dialogue with CLIA to investigate how to address these issues and to potentially consider other approaches. More broadly, we will continue to exercise flexibility as we seek innovative methods for ships operating within the North America ECA to achieve equivalent emission reductions at lower cost.

Again, thank you for your letter. If you have further questions please contact me or your staff may call Patricia Haman in EPA's Office of Congressional and Intergovernmental Relations at (202) 564-2806.

Sincerely,

A handwritten signature in black ink, appearing to read "Gina McCarthy", with a large, sweeping loop at the end.

Gina McCarthy
Assistant Administrator

United States Senate

WASHINGTON, DC 20510

12-001-3650

August 6, 2012

The Honorable Lisa P. Jackson, Administrator
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, N.W.
Washington, DC 20460-0001

Dear Administrator Jackson:

As you are aware, the U.S. Environmental Protection Agency (EPA) recently published two Notices of Data Availability (NODAs) related to the EPA's proposed rule governing cooling water intake structures under Section 316(b) of the Clean Water Act. We agree these NODAs raise critically important issues regarding cost-effective approaches to regulating affected facilities while protecting fishery resources; however, we believe the proposed rule has the potential to impose enormous costs on consumers without providing human health benefits or significant improvements to fish populations.

As a result, we believe the EPA needs to make a number of substantial improvements to the proposed rule before issuing it in final form. In addition, we are concerned by the "willingness-to-pay" public opinion survey, which we believe is misleading and will artificially inflate the rule's purported benefits. This rule will affect more than one thousand coal, nuclear and natural gas power plants and manufacturing facilities. Therefore, we urge you to ensure that the final rule provides ample compliance flexibility to accommodate the diversity of these facilities. Specifically, we request the EPA to address the following critical issues:

Flexibility. The proposed rule correctly provides state governments with the lead authority to make site-specific evaluations to address entrainment. It is vitally important the EPA's final rule retain this compliance flexibility, allowing technology choices to be made on a site-specific basis reflecting costs and benefits. We encourage the EPA to adopt these features in the impingement parts of the rule as well.

Aligned Compliance Deadlines. The final rule should extend the compliance deadline for impingement to the longer proposed deadline for entrainment, thereby providing adequate time to allow companies to make integrated, cost-effective compliance decisions.

Impingement Requirements. The proposed rule includes a stringent national numeric impingement standard that would be impossible for facilities to meet, even those with state-of-the-art controls. In fact, the technology preferred by the EPA – advanced traveling screens and fish return systems – is unable to meet the proposed standard on a reliable basis. We believe the final rule should instead provide multiple pre-approved technologies that would be recognized, once installed and properly operated, as sufficient to address impingement concerns. In cases where such technologies are not feasible or cost-beneficial, the rule should provide an alternative compliance option and relief where it can be shown there are *de minimis* impingement or entrainment impacts on fishery resources.

August 6, 2012

Page 2

Definition of Closed-Cycle Cooling. Many facilities today have closed-cycle cooling systems. The rule should ensure that the definition of what qualifies as closed-cycle systems at existing facilities is not more stringent than the one the EPA has already adopted for new facilities. Further, the definition should include any closed-cycle system recirculating water during normal operating conditions; and the definition must not exclude impoundments simply because they are considered waters of the United States.

Public Opinion Survey. We feel strongly that the EPA should not rely upon the "willingness-to-pay" public opinion survey discussed in the second NODA. The public opinion survey method is highly controversial and does not provide a scientific basis for reliable results; and we believe the survey results published thus far by the EPA lack peer review and, consequently, are insufficiently analyzed. This approach to economic analysis is far too speculative to serve as a basis for national regulatory decision-making, presenting very worrisome national, legal, policy, and governance implications which go well beyond this rulemaking.

For these reasons, we believe the EPA should issue the final rule this year without further consideration or inclusion of the public opinion survey results in order to provide regulatory and business certainty to those companies facing significant capital decisions related to compliance with this and other EPA rules. Rather than using a misleading survey to inflate the rule's benefits, the EPA should adopt the above improvements, which would help to reduce the current substantial disparity between the proposed rule's costs and benefits. Such actions by the EPA would also conform to the President's Executive Order 13563, issued in January 2011, directing agencies to adopt rules minimizing regulatory burden and producing maximum net benefits.

Thank you for your consideration of our concerns. We look forward to your response.

Sincerely,

to Benjamin Nelson

Mark Royce

[Signature]

Celine McCasill

Pat Roberts

Sally Chaudhri

Lamar Alexander

Mike Cryer

Ray Hunt

Mary L. Swisher

John Boozman
Kristen
Mark R. Warner
Dan Coats

Paul Cohen
Pat Rooney
M. N.
Mike Johanns

cc: Jacob J. Lew, Chief of Staff, Office of the President
Jeffrey Zients, Acting Director, Office of Management and Budget
Cass R. Sunstein, Administrator, Office of Information and Regulatory Affairs



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

DEC 31 2012

OFFICE OF WATER

The Honorable Marco Rubio
United States Senate
Washington, D.C. 20510

Dear Senator Rubio:

Thank you for your letter of August 6, 2012, to the U.S. Environmental Protection Agency (EPA) Administrator Lisa P. Jackson regarding the proposed rule for cooling water intake structures that the EPA published in April 2011. During the public comment period for the proposed rule, we received many comments on how to make national standards work better for the diverse community of interests, including more than 1200 industrial facilities, state permitting authorities, and commercial and recreational fishermen. Your letter reflects some of the concerns we heard during the public comment period. The EPA is carefully considering the comments and new data we have received from the regulated community and other stakeholders as it works toward a final rule. As the senior policy manager of the EPA's national water program, I am pleased to respond to your letter on behalf of Administrator Jackson.

The proposed rule would establish national standards under section 316(b) of the Clean Water Act for certain existing power plants and manufacturing facilities. Under the Clean Water Act, section 316(b) standards must reflect the best technology available for "minimizing adverse environmental impact." The proposed rule seeks to minimize adverse environmental impact through standards that protect aquatic organisms from death and injury resulting from the withdrawal of water by cooling water intake structures. The largest power plants and manufacturing facilities in the United States (that each withdraw at least two million gallons per day) cumulatively withdraw more than 219 billion gallons of water each day, resulting in the death of billions of aquatic organisms such as fish, larvae and eggs, crustaceans, shellfish, sea turtles, marine mammals, and other aquatic life. Most impacts are to early life stages of fish and shellfish through impingement¹ and entrainment². The proposed rule would establish a baseline level of protection from impingement and then allow additional safeguards for aquatic life to be developed through site-specific analysis by the states. This flexible approach would ensure that the most up-to-date technologies are considered and appropriate cost-effective protections of fish and other aquatic populations are used.

Your letter expresses concerns regarding the potential costs that our rule may have on power plants and on consumers. Let me assure you that the EPA takes these concerns very seriously. The agency is working hard to develop a final rule that achieves environmental benefits consistent with the Clean Water Act and in a way that ensures that our nation's energy supplies remain reliable and affordable.

¹ Impingement is the pinning of fish and other larger aquatic organisms against the screens or other parts of the intake structure.

² Entrainment is the injury or death of smaller organisms that pass through the power plant cooling system.

Your letter expressed concern about the impingement mortality standards, related alternatives and flexibility, and the timeline for compliance in the proposed rule. Since proposal, the EPA has received new data related to the performance of impingement mortality control technologies. In particular, the EPA obtained more than 80 studies that provided additional data on the costs and performance of these technologies. These data include important information related to how the EPA might approach the definition of impingement mortality and compliance alternatives.

On June 11, 2012, the EPA published a Notice of Data Availability (NODA) setting forth a number of possible approaches to increase flexibility for impingement requirements. Perhaps most significantly, the NODA described a streamlined regulatory process for facilities that simply opt to employ specific pre-approved technologies that have been consistently demonstrated to protect the greatest numbers of fish and other aquatic life. The NODA solicited comment on how to establish impingement controls on a site-specific basis in those circumstances in which the facility demonstrates that the typical controls are not feasible. The NODA also identified a possible site-specific impingement category that would reduce or even eliminate new technology requirements for facilities with very low rates of fish and aquatic life death or injury. The EPA also requested comment on how best to define closed-cycle recirculating systems to ensure effective operation of these systems at existing facilities. We were pleased that stakeholders submitted the information requested in the NODA, and the EPA is considering all of this new information as we move toward completing the final rule.

Your letter also indicated concern with an EPA survey that is described in a second NODA published June 12, 2012. As stated in the NODA, the EPA's work in this area is preliminary and, "the agency has not yet determined what role, if any, the survey will play in the benefits analysis of the final 316(b) rulemaking." This survey was conducted to provide the public with more complete information about the benefits of reducing fish mortality. The benefits to society of preventing ecological damage to the aquatic environment are difficult to assess because it is hard to place a monetary value on the ecological services and public benefits of a healthy ecosystem. At the time of proposal, the EPA made it clear that the Regulatory Impact Analysis (RIA) underestimated the actual benefits and that the agency had already commenced a stated preference survey in order to do a better job of capturing the benefits of the rule.

The stated preference method poses hypothetical policy options, allowing researchers to directly inquire about citizens' willingness to pay for environmental improvements. This method can assess ecological benefits in a more complete manner than the methodologies the EPA used for the proposed rule. Stated preference methodologies have been refined for over 30 years in the academic literature, have been extensively tested and validated through years of research, and are widely accepted by both government agencies and the U.S. courts as a reliable technique for estimating non-market values of healthy ecosystems.³ The EPA has been using data derived from stated preference surveys, where appropriate, in RIAs, for several decades. The EPA survey described in the second NODA follows the White House Office of Management and Budget (OMB) published guidance on conducting such surveys (Circular A-4: Regulatory Analysis 2003), and was approved by OMB in June 2011.

³See: *Enhancing the Content Validity of Stated Preference Valuation: The Structure and Function of Ecological Indicators*, Johnston et al., 2012 and *What Have We Learned from Over 20 Years of Farmland Amenity Valuation Research in North America?*, Bergstrom and Ready 2009.

The NODA was intended to inform the public of the preliminary results of the survey, make this information available for review, and provide an opportunity for all interested stakeholders to comment. The EPA also explained that the survey would be revised based on additional analysis, a range of analytical tests for rigor and consistency, public comments, and the results of an external peer review which would be completed prior to taking final action on the rule.

Since publication of the NODA, the EPA has completed the majority of this additional analytical work and reviewed the public comments from the June 12 NODA. We are also proceeding with an independent, external peer review, as described above, with a panel of economists and survey experts. Once the EPA has revised its analysis to reflect peer reviewer comments, the results of the stated preference survey will be posted online at: <http://epa.gov/waterscience/316b>. After a full review of the completed analysis, public comments, and the independent peer review, the agency will be in a position to determine the appropriate use of the stated preference survey in the final 316(b) rulemaking.

Again, thank you for your letter on this important rule. The agency proposed these regulations to meet its Clean Water Act obligations, and we expect to take final action in 2013. In doing so, we intend to fully consider all comments we received during the public comment periods for the proposed rule and the subsequent comments received in response to the two NODAs published in the Federal Register on June 11 and 12, 2012. For additional information on the proposed rule or the NODAs, please go to the EPA's 316(b) webpage at the above link.

If you have further questions, please contact me or your staff may call Greg Spraul in the EPA's Office of Congressional and Intergovernmental Relations at (202) 564-0255.

Sincerely,

A handwritten signature in black ink, appearing to read 'Nancy K. Stoner', with a stylized flourish at the end.

Nancy K. Stoner
Acting Assistant Administrator

L 12-001-9910

**Office of U.S. Senator Marco Rubio**

201 S. Orange Ave., Suite 350

Orlando, FL 32801

Phone 407-254-2573

Fax 407-423-0941

To: Arvin Ganesan
Environmental Protection Agency

From: Jason Teaman

Pages: 9 (Including cover) Date: 11/30/2012

Fax: 202-501-1519

Re: Botzong, Glenn

Comments:

I would greatly appreciate it if you could review this matter and provide a response. Please address your response to Senator Marco Rubio c/o Jason Teaman at 201 S. Orange Ave., Suite 350, Orlando, FL 32801.

Best Regards,

A handwritten signature in black ink, appearing to read "Jason Teaman", with a long horizontal line extending to the right.

Jason Teaman
Constituent Services Representative
Jason_Teaman@rubio.senate.gov



Office of U.S. Senator Marco Rubio

Privacy Act Consent Form

In accordance with the provisions of The Privacy Act of 1974 (Public Law 93-579), your written consent is required so that we may create a federal record of your e-mail. These e-mails do not contain a valid signature, they do not fulfill the requirements of the law. If you are inquiring on behalf of another person, you must be older than 18 and a resident of the United States. All information must be written in English.

Title: (select one) ☒ Mr. ☐ Ms. ☐ Mrs. ☐ Mr. & Mrs. ☐ Rev. ☐ Doctor ☐ Other: _____

Name: EX-6 (Middle Name) (Last Name)

Address: EX-6 City: LAKE WALKER State: FL

Zip code: 33898 Phone: EX-6 x: _____ Cell: _____

E-mail Address: _____ Date of Birth: EX-6

If you have contacted another congressional office to assist you, please list the office: _____

Federal Agency Issue:

ROAD DAMAGE AFTER PLANE CRASH (NTSB, EPA)
(Please complete the sections that apply to your case on page 2)

BRIEFLY STATE YOUR PROBLEM AND WHAT OUTCOME YOU WOULD LIKE FROM THIS INQUIRY.

PRIVATE ROAD DAMAGED MAKING ACCESS TO LOCAL RESIDENTS DIFFICULT. HEAVY VEHICLES USED BY NTSB & EPA DESTROYED THE CRUST (TOPPING OF CLAY, ROCKS AND/OR TILE MAKING A FIRM ROADWAY.) RESIDENTS WOULD LIKE LEVELING, HOLES FILLED W/CLAY & 6 INCHES CLAY BY 15' WIDE BY APP. 2 MILES LENGTH.

Signature: _____

Date: 11-30-12

I have discussed my concerns with Senator Marco Rubio and/or his representative(s), and request that any relevant information that is required to assist in responding to my inquiry may be furnished upon request.

REQUIRES LEVELING TO 6" DEPTH, PACKING & WATERING IN.

Please return the completed form:

By mail:

U.S. Senator Marco Rubio
201 S. Orange Avenue, Suite 350
Orlando, Florida 32801

By fax:

(407) 423-0941

By email:

casework@rubio.senate.gov

If you have any questions, please call the Orlando Regional Office at (407) 254-2573 or (866) 630 7106, toll-free in Florida.

Name: Ex. L
 (First Name) (Middle Name) (Last Name)

FOR INTERNAL USE ONLY:

WORKFLOW #

COMPLETE THE SECTION THAT APPLIES TO YOUR CASE

CHILD SUPPORT (Note: By law, if both parents reside in Florida, your inquiry will be referred to your state legislators.)

Child Support Case Number: _____

Name of Custodial Parent: _____ Date of Birth: _____ SSN: _____

Name of Non-custodial Parent: _____ Date of Birth: _____ SSN: _____

Name of Child(ren): _____ Date of Birth: _____ SSN: _____

IMMIGRATION

Alien Number: _____ Date of Birth: _____ Place of Birth: _____

Type of Application Filed: _____ Beneficiary Name: _____
 (Ex: N-400, I-130, I-765)

Receipt Number: _____

MEDICARE/SOCIAL SECURITY

Type of Claim Filed: _____ SSN: _____ Date Filed: _____

Current Level of Appeals: _____ Medicare Provider Number: _____

Medicare Supplier Number: _____ Name of Business: _____

MILITARY/VETERAN (Note: Complete this section only if you are seeking assistance with a military/VA issue. If you have a Tri-care problem, please contact our office to obtain a Tri-care Authorization Form.)

Military Rank and Unit: _____ Duty Station: _____ VA Claim Number: _____

Home of Record Address: _____

Type of Claim: _____ VA Office Where Claim is Located: _____

MORTGAGE

Loan Servicer: _____ Loan Number: _____

Name of Federal Agency: NTSB & EPA & FAA

PASSAGE

Name of Applicant: _____ Passport Number: _____

Date of Birth: _____ Place of Birth: _____ Consulate: _____

CONSTITUENT SERVICES WORKSHEET

Name: <u>EX-6</u>	CCA: PK120044
Landline:	Cell: <u>EX-6</u>
Email: <u>EX-6</u>	a (Neighbor)
Address:	Wales, FL 33898
Social Security #:	DOB:
Issue: Local, state and federal vehicles damaged private road	

Date	Description of Action Taken
10/23/2012	<p>We received an email from Sharon Ahearn with the Polk County Commissioners requesting our assistance with a situation involving damage done to a road during the recovery/cleanup of a plane crash in Lake Wales.</p> <p>Summary: Plane crashed on June 7, 2012 at Tiger Creek Reserve in the Nature Conservatory in Lake Wales, Florida at the end of Jewell Lane (http://www.wslp.com/news/article/258338/8/The-Bramlage-family-of-6-was-killed-Thursday-in-a-tragic-plane-crash-in-Lake-Wales). Jewell Lane is a private road that has been maintained by the residents living thereon. The two mile dirt road consisted of clay, tile and lime rock as the base of the road prior to the plane crash. The residents who could afford to contribute, paid out of pocket to surface the road. With the emergency vehicles and heavy trucks and equipment accessing the road after the crash, the 'crust' of the road has been destroyed.</p> <p>The road surface, which was flat and hard and easily accessible for the residents' vehicles, now is full of potholes, sugar sand and ditches making it very difficult for residents to get to their homes.</p> <p>The residents are requesting that the road be returned to its original condition prior to the airplane crash.</p>
10/23/2012	I called Sharon to let her know we had received the email and would look into it. I told her that Mr. Botzong was welcome to contact us directly if he would like to.
10/23/2012	I forwarded the initial letter to Representative Albritton so that he was aware of the situation.
10/29/2012	Mr. Botzong called the office to see if we thought we may be able to help them. I asked him to get a list of all of the agencies that he was aware of who had accessed the road during the recovery process. I also asked him if he could give me a ballpark estimate as to what it would cost to return the road to its condition before the crash. I told him I would make some initial phone calls to try to get some direction and that I would come out and look at the damage to the road.
10/29/2012	I emailed Zach Burch with FDOT to see if he could give me any suggestions with this. He said that he was going to do some checking around and get back to me.
10/30/2012	Zach called back and said that he had checked with some of their staff and attorneys and they feel like the residents have a very legitimate complaint and have suffered damages that could easily be proven. They have not run across a situation like this before and they need to do some research for possible options. Zach is going on his honeymoon next week so he is turning this over to Toby Philpot while he is gone.

[illegible]

Whaley, Karen

From: Whaley, Karen on behalf of Albritton, Ben
Sent: Tuesday, October 23, 2012 11:27 AM
To: Ben Albritton (ben@albrittoncompanies.com)
Subject: Bolzong...Chumney...Airplane Crash/Lake Wales
Attachments: SRMBT_C45212301612110.pdf

This is a very interesting request. My first thought would be to determine who carried the insurance on the airplane and see if the road damage would be covered by their policy. Please let me know your thoughts.

Karen F. Whaley

District Aide to
Representative Ben Albritton
District 06
150 North Central Avenue
Bartow, Florida 33830
(888) 531-0033 - District Office
(888) 332-1041 - Cell Phone



From: Ahearn, Sharon (mgill@SharonAhearnpoll-county.net)
Sent: Tuesday, October 23, 2012 10:01 AM
To: Albritton, Ben
Subject: FW: Bolzong...Chumney...Airplane Crash/Lake Wales

Attached is a statement from residents of Jewell Lane in Lake Wales. This was the site of the airplane crash in June of 2012. As state vehicles were involved in clearing the wreckage from the crash scene, can you see if the State will offer any assistance in repairing the damages to this road. As Jewell Lane is a private road, the county will not offer any assistance with the repairs.

Thank you!

From: Ahearn, Sharon
Sent: Tuesday, October 16, 2012 12:19 PM
To: Kushner, Mike
Subject: Bolzong...Chumney...Airplane Crash/Lake Wales

Attached is a statement, from two Jewell Lane residents (Glenn Bolzong & Hughie Chumney) relative to the airplane crash in Lake Wales on June 7th. When you have time to review this information, please let me know if this is sufficient to file a claim on their behalf for the damage to Jewell Lane, which is a private road maintained by the residents.

October 16th, 2012

EX-6

Tel:

EX-6

Lake Wales, FL 33898

Hughie Chumney.....Tel: (863) 696-1010 & (863) 412-9450

6590 Jewell Lane

5113 Tiger Creek Road (Mailing Address)

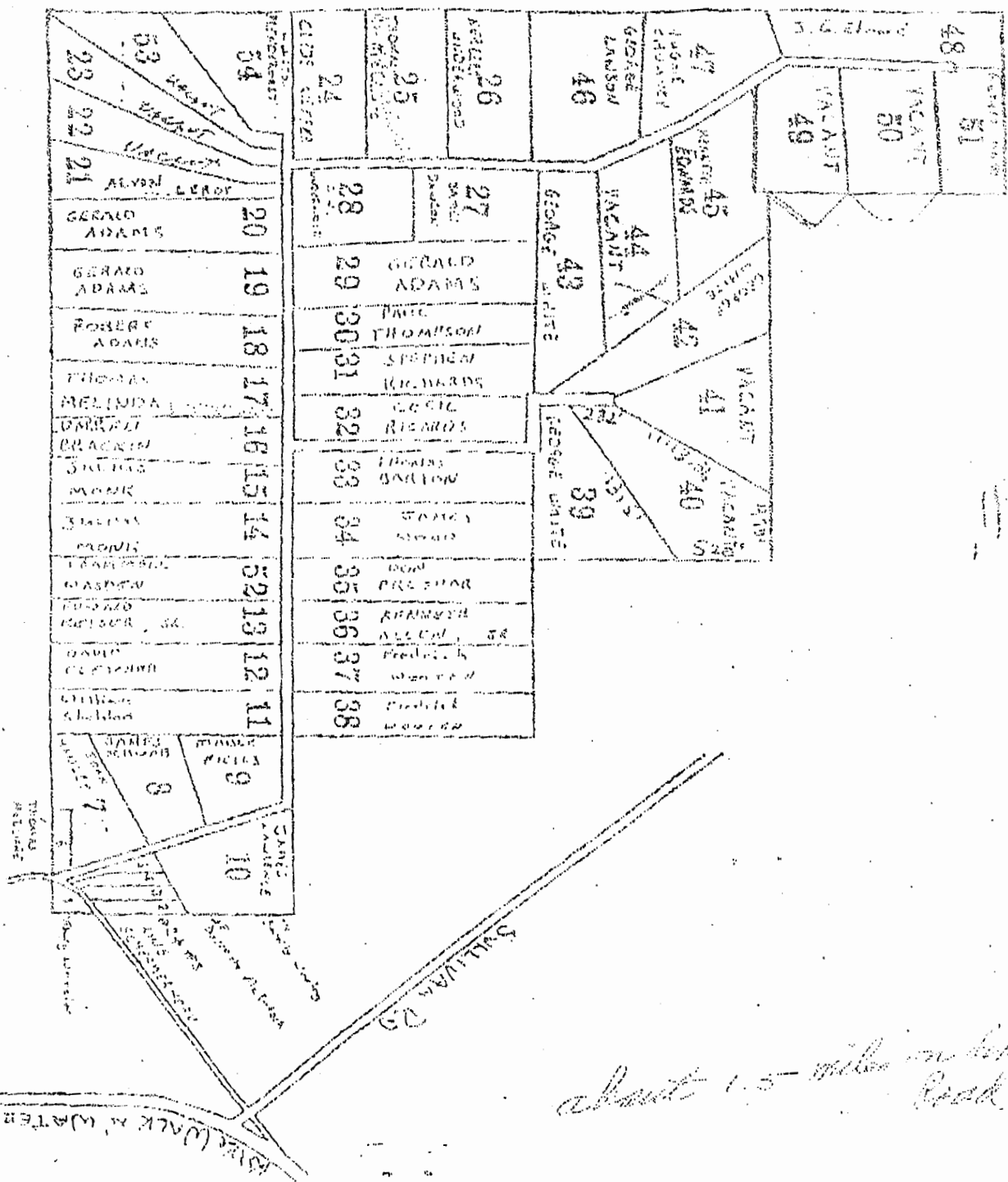
Lake Wales, FL 33898

Plane Crash on June 7th, 2012 @ Tiger Creek Reserve in the Nature Conservancy.....Lake Wales, FL @ the end of Jewell Lane in Lake Wales. Jewell Lane is a private road that has been maintained by the residents living thereon. The two mile dirt road consisted of clay, tile and limestone as the base of the road prior to the airplane crash. With the emergency vehicles and heavy trucks and equipment accessing the road, due to the emergency situation of the airplane crash, the 'crust' of the road has been jeopardized.

When the airplane crashed in the vicinity of Jewell Lane, fire trucks, Sheriff's vehicles, Ambulances, ATV's and news trucks were in the area to assist in the rescue of potential survivors of the crash. The National Transportation Safety Board also was involved in the recovery of the airplane and clean/up of fuel from the crash.....

The road surface, which was flat and hard and easily accessible for the residents' vehicles, now is full of potholes and ditches -- making it almost impassable in inclement weather.

The residents are requesting that the road be returned to its' original condition prior to the airplane crash on June 7th, 2012.



about 1.5 miles on left Road

copy 1/4/7/12

Whaley, Karen

From: Whaley, Karen
Sent: Monday, October 29, 2012 2:09 PM
To: Burch, Zachary (Zachary.Burch@clot.state.fl.us)
Subject: FW: Batzong...Chumney...Airplane Crash/Lake Wales

Zachary,

Here is the original email that was written by Mr. Batzong and Mr. Chumney and forwarded to me by Sharon Abcam with County Commissioner Melony Bell's office:

Plane crash on June 7, 2012 at Tiger Creek Reserve in the Nature Conservatory in Lake Wales, Florida at the end of Jewell lane in Lake Wales. Jewell lane is a private road that has been maintained by the residents living thereon. the two mile dirt road consisted of clay, tile and lime rock as the base of the road prior to the plane crash. With the emergency vehicles and heavy trucks and equipment accessing the road, due to the emergency situation of the airplane crash, the 'crust' of the road has been jeopardized.

When the airplane crashed in the vicinity of Jewell land, fire trucks, Sheriff vehicles, ambulances, ATV's and news trucks were in the area to assist in the rescue of potential survivors of the crash. the National Transportation Safety Board also was involved in the recovery of the airplane and clean up of the fuel from the crash.

The road surface, which was flat and hard and easily accessible for the residents' vehicles, now is full of potholes and ditches making it almost impassable in inclement weather.

The residents are requesting that the road be returned to its original condition prior to the airplane crash.

Mr. Colon Batzong called our office this morning and I was able to get some more information from him. The plane crash itself did not damage the road. It was the responding vehicles that caused all of the damage. The road he is referring to is a small dirt road that leads into the lots where the homes are located. The individuals who live there got together and the ones who could afford it, paid to have the dirt hauled in for the road and for a topping put down to form a crust on it.

After the plane crash the National Transportation and Safety Board, Fire and Rescue vehicles, news crews and other agencies responding to the crash site caused substantial damage to the road making it nearly impossible for the homeowners who have cars or smaller vehicles to navigate. He said that the state owns over half of the lots there but did not contribute to the funding for building the original road. State and County vehicles such as the Department of Forestry, Florida Fish and Wildlife and utility vehicles use the road on a regular basis.

When they asked for assistance with repairing the road to the condition it was in prior to the crash, they were told it is a private road so no funding is available. Had that road not been there for these agencies to use, it would have been considerably more expensive for them to clear a way to gain access to the crash site.

Thanks for taking a look at this for us. Mr. Batzong can be reached at 321-836-3800 if you need to speak to him directly.

Karen L. Whaley

District Aide to
Representative Ben Albritton
District 66
150 North Central Avenue



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 4
ATLANTA FEDERAL CENTER
61 FORSYTH STREET
ATLANTA, GEORGIA 30303-8960

DEC 26 2012

The Honorable Marco Rubio
United States Senator
201 S. Orange Avenue, Suite 350
Orlando, Florida 32801

Dear Senator Rubio:

Thank you for your November 30, 2012. correspondence to the U.S. Environmental Protection Agency, on behalf of your constituent, Mr. ~~Ex-L~~, regarding a plane crash that occurred near Lake Wales, Florida, on June 7, 2012. Mr. ~~Ex-L~~ is seeking restoration of a private road damaged by emergency vehicles belonging to various federal, state and local agencies that responded to the crash.

The EPA Region 4 did not deploy a responder to the scene of the plane crash. My staff has contacted the Florida Department of Environmental Protection and confirmed that the state agency did respond to the incident. Mr. ~~Ex-L~~ may wish to contact Ms. Gwen Keenan, Chief, Bureau of Emergency Response, FDEP, for additional information regarding the State's response to this incident. Ms. Keenan can be reached by phone at (850) 245-2010, or in writing at the following address:

Florida Department of Environmental Protection
Office of Emergency Response
3900 Commonwealth Blvd.
Tallahassee, Florida 32399-3000

If you have questions or need additional information from the EPA, please contact me or the Region 4 Office of Congressional and Intergovernmental Relations at (404) 562-8327.

Sincerely,

A handwritten signature in cursive script that reads "Gwendolyn Keyes Fleming".

Gwendolyn Keyes Fleming
Regional Administrator

cc: Herschel Vinyard, Secretary, FDEP

Gwen Keenan, Chief
Bureau of Emergency Response, FDEP

11-000-8338

United States Senate
WASHINGTON, DC 20510

May 24, 2011

The Honorable Lisa Jackson
Administrator
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, NW
Washington, DC 20460

Dear Administrator Jackson:

We are writing to express our concerns with the outdoor criteria of the WaterSense Single Family New Homes Specification finalized in December 2009. While the WaterSense specifications were developed with the laudable goals of promoting water efficiency and improving the environment, it is our understanding that the WaterSense outdoor criteria, specifically the turf limitations, fall short of these goals. We also further understand that, as drafted, these criteria will have significant economic impacts. Therefore, we respectfully request that you reconsider these criteria in the WaterSense program.

Unlike the indoor criteria, which focus on the use of labeled WaterSense products, the outdoor criteria center on a subjective, one-size-fits-all 40% turf restriction and a complex and inadequate water budget. We have several concerns with these outdoor criteria. First, the turf limitation ignores the many positive environmental attributes of turf, including oxygen creation, carbon sequestration, storm water run-off abatement, and ambient temperature reduction among others. Secondly, anyone who chooses to use the water budget formula will find no relief due to its complexity. Furthermore, the water budget formula results in an outcome skewed by the biases that underlie the turf limitation in the first place. Finally, it is our understanding that the environmental benefits of the turf limitations are not only questionable, but the limitations will also result in the elimination of a substantial number of jobs in the fields of landscape installation and maintenance, something our economy can ill afford.

Given these concerns, we respectfully request that you review the outdoor criteria of the WaterSense New Single Family Homes Specification. In doing so, we encourage you to remember the dual environmental and economic objectives of the WaterSense program. To that end, we also request that you provide to us detailed information as to how you have or will account for the economic implications of any turf limitations in the program to the landscape installation and maintenance industry.

We look forward to your prompt response.

Ma R

Respectfully,

[Signature]

Lamar Alexander

Bill Nelson

cc: Karen Mills, Small Business Administration



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

JUN 22 2011

OFFICE OF
WATER

The Honorable Marco Rubio
United States Senate
Washington, D.C. 20510

Dear Senator Rubio:

Thank you for your letter of May 24, 2011, to Lisa Jackson, Administrator of the Environmental Protection Agency (EPA). Your letter conveyed concerns about the EPA WaterSense program's *Water-Efficient Single-Family New Home Specification*. As always, we welcome the input of members of Congress.

The WaterSense program is an entirely voluntary, market-enhancement program designed to spur investment and innovation in water-efficient technologies and programs. Because it is voluntary in nature, industry and stakeholders may choose to participate if they believe that it will provide a market advantage to them to be more water-efficient or to design more high-performing, water-efficient products. Those products, programs, or new homes that meet EPA's specifications may bear the WaterSense label. The label, in turn, helps the public make informed decisions when seeking to make water-efficient purchasing decisions.

The WaterSense specification offers builders two flexible options for landscaping water-efficient new homes. The first option allows builders to customize their landscape to local climates and conditions because it is based on local evapotranspiration rates, which take into account regional climate and local precipitation averages, as well as the needs of whichever plant types the builder/landscaper chooses. The turf allocation under this option varies for each home, depending on where the home is located and the type of turf installed, among other factors. The second option, planting a maximum of 40 percent turf, likewise allows and encourages flexibility in landscaping the other 60 percent of the yard. It is important to note that the 40 percent option generally applies only to the front yard of the home.

Our understanding is that the majority of homes that have been labeled to date used the water budget tool in designing their landscape to meet the outdoor criteria. However, we understand that the spreadsheet format of the tool is not as user-friendly as it could be. To address this concern, WaterSense is developing an on-line version for release later this year which will be much easier to use.

Addressing outdoor water use is critical to defining a water-efficient home and to the success of the program because outdoor water use represents a large proportion of residential water use. On average, single-family homes in this country use 30 percent of their water outdoors. In some areas of the country it is as high as 70 percent. Certainly in Florida, where you are seeing the effects that drought can have on local water supplies, a landscape that can withstand such conditions will reduce demand on the supply required to meet basic community needs. Efficient irrigation design and appropriate plant selection will

ensure that homes bearing the WaterSense label are efficient both indoors and outdoors. To further support outdoor efficiency, EPA will later this year release a highly anticipated final WaterSense specification for weather-based irrigation controllers.

Again, thank you for your letter. If you have further questions, please contact me or your staff may call Pamela Janifer, in EPA's Office of Congressional and Intergovernmental Relations, at (202) 564-6969.

Sincerely,

A handwritten signature in black ink, appearing to read 'Nancy K. Stoner', with a stylized, looping flourish at the end.

Nancy K. Stoner
Acting Assistant Administrator

United States Senate

COMMITTEE ON SMALL BUSINESS & ENTREPRENEURSHIP
WASHINGTON, DC 20510-6350

13-000-8117

July 23, 2013

Ms. Gina McCarthy
Administrator
U.S. Environment Protection Agency
Mail Stop 5401-P
1200 Pennsylvania Avenue, N.W.
Washington, D.C. 20460

Re: EPA Proposed Rule: Revisions to Existing Requirements and New Requirements for
Secondary Containment and Operator Training (EPA-HQ-UST-2011-0301)

Dear Administrator McCarthy:

We are writing you in regards to the U.S. Environmental Protection Agency's (EPA) proposed rule amending 40 CFR Parts 280 and 281; Revisions to Existing Requirements and New Requirements for Secondary Containment and Operator Training (EPA-HQ-UST-2011-0301), published in the Federal Register on November 18, 2011. In light of the regulatory cost impact of the proposed rule may have on small businesses, we respectfully request that the EPA convene a Small Business Advocacy Review (SBAR) panel to reanalyze the impact of this rule on small business and prepare an Initial Regulatory Flexibility Analysis (IRFA), before finalizing the proposed rule.

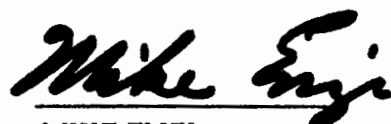
The Regulatory Flexibility Act (RFA), as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA), requires the EPA to convene a Small Business Advocacy Review (SBAR) Panel, prior to the publication of an Initial Regulatory Flexibility Analysis, to collect input towards determining whether a rule is expected to have a significant economic impact on a substantial number of small entities. An agency covered under SBREFA, such as the EPA, may circumvent this requirement if it can certify that the proposed rule will not have a significant economic impact on a substantial number of small entities.


After considering the economic impact of the proposed rule on small businesses, as required by the RFA, the EPA certified that the proposed rule would not have a significant economic impact and determined small business motor fuel retailers would experience an impact over 1 percent of revenues but less than 3 percent of revenues. However, according to some industry experts, annual compliance costs may reach as much as approximately \$6,900, and may negatively impact approximately 60 percent of the convenience store industry comprised of single-store, mom-and-pop, businesses. We are concerned that the Agency's estimated annualized compliance costs of \$900, included as part of the EPA's certification required under the RFA, may be significantly underestimated.


Additionally, the EPA stated in its certification that it conducted extensive outreach in order to determine which changes to make to the 1988 regulations and that it worked with representatives of owners and operators of underground storage tanks and reached out specifically to small businesses. Accordingly, we respectfully request information regarding the extent of that outreach, specifically when and in what manner that outreach was conducted. We also request information regarding the "representatives of owners and operators" and small businesses with which the Agency "worked" as part of this certification. Additionally, given the potential cost impact that this proposed rule would have on small businesses, and to maintain the spirit of the law as Congress intended, we respectfully request that the Agency form a SBAR Panel with small entity representation pursuant to the requirements set forth under the law and prepare an IRFA reanalyzing the impact of this rule on the small business community.

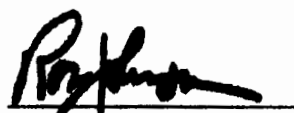
Sincerely,

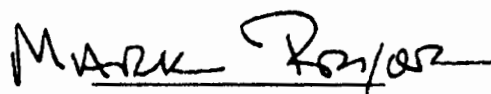

MARY L. LANDRIEU
Chair

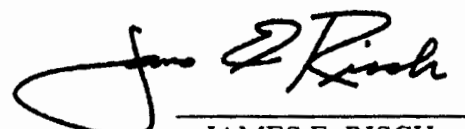

MIKE ENZI
Member

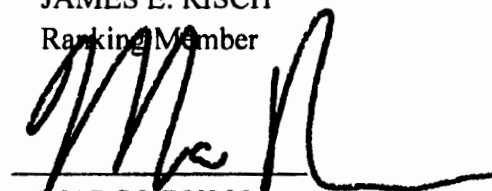

DEB FISCHER
Member

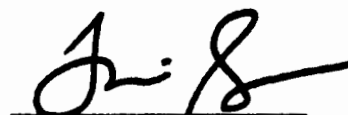

HEIDI HEITKAMP
Member

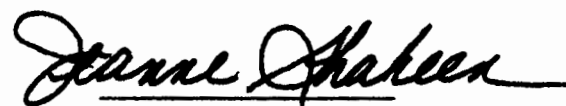

RON JOHNSON
Member

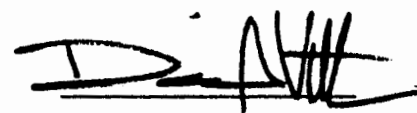

MARK L. PRYOR
Member


JAMES E. RISCH
Ranking Member


MARCO RUBIO
Member


TIM SCOTT
Member


JEANNE SHAHEEN
Member


DAVID VITTER
Member



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

NOV 25 2013

OFFICE OF
SOLID WASTE AND
EMERGENCY RESPONSE

The Honorable Marco Rubio
United States Senate
Washington, D.C. 20510

Dear Senator Rubio:

Thank you for your letter of July 23, 2013, regarding the proposed revisions to the U.S. Environmental Protection Agency's (EPA) underground storage tank regulations. Knowing that the majority of our regulated entities are small businesses, we agree it is important to recognize potential impacts to this sector. This was one of the main reasons why, when drafting the proposal, we made a concerted effort to propose provisions which would not require costly retrofits to existing underground storage tank (UST) systems, yet would help ensure protection of public health and the environment.

The EPA carefully evaluated the costs associated with the proposal and explained the agency's analysis in the regulatory impact assessment (RIA). Our analysis determined that the potential costs of the proposal did not reach a level that would require convening a Small Business Advocacy Review Panel. Although EPA did not convene a Panel, we sought extensive stakeholder input to help inform our rulemaking proposal.

Prior to the November 2011 proposal, the EPA engaged in a multi-year effort with stakeholders to identify appropriate updates and modifications to the UST regulations. Before the EPA started to draft regulatory language, the agency reached out to potentially affected parties to ask for their input on what changes to make to the UST regulations. Starting in March 2008, the EPA had conference calls, in person meetings, and shared emails with stakeholders. The EPA reached out to petroleum marketers and other owners and operators of UST systems, equipment manufacturers, vendors and service providers who work on the equipment, among others. Specifically, the EPA met with industry representatives of Petroleum Marketers Association of America (PMAA), American Petroleum Institute (API), National Association of Convenience Stores (NACS), SIGMA, National Association of Truckstop Owners (NATSO) and the Petroleum Transportation and Storage Association (PTSA). In addition to meeting with these stakeholders, the EPA also met with several individual marketing, equipment and service companies. The EPA held a series of in person meetings with these groups to gain their input on potential changes to the UST regulations. The feedback included information about field experience with UST system equipment, requests not to require extensive retrofits, and general support for a focus on operations and maintenance activities. These meetings were held March 17, 2008, April 17, 2008, June 18, 2008 and November 18, 2008.

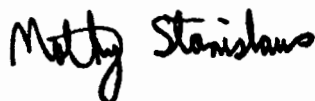
The EPA documented a list of all of the ideas submitted by stakeholders during these meetings as well as through email. In January 2009, the EPA emailed this list of potential changes to the UST regulations to all stakeholders, and asked for their comments on the ideas. Based on all of the comments received in

response to the January 2009 email, the EPA narrowed the list of potential changes to the UST regulations. In June 2009, the EPA emailed the narrowed list to stakeholders. We invited stakeholders to submit their thoughts to us and to let us know if they would like to set up a phone call to discuss any of the issues. The EPA met with all industry representatives who asked to do so. Before, during, and since the end of the rulemaking comment period, we have held more than 100 meetings with stakeholders. From the list that the EPA developed through extensive stakeholder input, we drafted the proposal. In addition to meeting with all interested stakeholders, the EPA worked with the Small Business Administration's Office of Advocacy (SBA) before the proposal was published as well as during the public comment period. Following the EPA's rulemaking process, before publishing the proposal in the federal register, all other federal agencies were given an opportunity to review and comment on the proposal. SBA was an integral part of this process. In addition, we worked with SBA during the public comment period. SBA brought to our attention that many small businesses were confused by the proposed changes to wastewater treatment tanks. The EPA and SBA worked together to develop explanatory materials on these UST systems to provide the clarity sought by small business.

In order to ensure that members of the public had an opportunity to comment on the proposal, the EPA extended the comment period from 90 to 150 days. The agency takes the comments we receive during regulatory comment periods very seriously. After receiving comments, the EPA worked diligently to understand industry's cost information comments so that we could thoroughly evaluate our cost analysis. The EPA appreciates the detailed response from commenters, and has fully considered the comments including the compliance costs submitted by industry representatives. We are currently working to determine the appropriate path forward using the comments we received to help inform our decision making. Some of the changes to the proposal that the EPA is considering would reduce the costs of the final rule. We share your concern about the potential burden on small businesses and are working to minimize the costs while we maintain appropriate public health and environmental protection.

Again, thank you for your letter. If you have further questions, please contact me or your staff may contact Raquel Snyder, in EPA's Office of Congressional and Intergovernmental Relations, at Snyder.Raquel@epa.gov or (202) 564-9586.

Sincerely,

A handwritten signature in black ink that reads "Mathy Stanislaus". The signature is written in a cursive, slightly slanted style.

Mathy Stanislaus
Assistant Administrator

United States Senate

WASHINGTON, DC 20510

11-001-0304

June 27, 2011

The Honorable Lisa Jackson
Administrator
Environmental Protection Agency
Ariel Rios Building
1200 Pennsylvania Avenue, N.W.
Washington, DC 20460

Dear Administrator Jackson,

We are writing to you today with our concerns regarding the implementation timeline for the Oil Spill Prevention, Control and Countermeasure (SPCC) rule for farmers.

First we would like to thank you for finalizing the exemption of milk and milk product containers from the SPCC rule on April 12, 2011. We appreciate your attentiveness to the feedback you received from the agriculture community. We also appreciate your willingness to prevent the unintended consequences of the SPCC regulations, which would have placed a tremendous burden on the agricultural community.

We are writing to you today with our concerns regarding the implementation timeline for the SPCC rule for farmers. As you know, last year the EPA proposed extending the compliance date under the SPCC rule to November of 2011. We applaud EPA's current extension for farms that came into business after August of 2002. We also appreciate the efforts of EPA and USDA to inform farmers about the new guidelines -- in particular, USDA's new pilot initiative to help producers comply with the new SPCC rule. However, we remain concerned that EPA has not yet undertaken the outreach necessary to ensure that all farms have sufficient opportunity to meet their obligations under the regulation.

SPCC regulations are applicable to any facility, including farms, with an aggregate above-ground oil storage capacity of 1,320 gallons in tanks of 55 gallons or greater. To comply with this rule, farms where there is a risk of spilled oil reaching navigable waters may need to undertake costly engineering services, as well as infrastructure improvements, to assure compliance with the regulation. Despite setting stringent standards, the EPA has done little to make sure small farms can meet the requirements set forth in the SPCC rule.

We strongly believe farmers want to be in compliance with the rule, but in order to do so they will need a longer period during which EPA undertakes a vigorous outreach effort with the agricultural community. Currently, the farming community in many instances lacks access to Professional Engineers (PEs). We have heard from many farmers who cannot find PEs willing or able to work on farms. In some states, no qualified professional engineers have even registered to provide SPCC consultation. In others, fewer than five have registered. Without access to PEs, it will be impossible for farmers to become SPCC compliant.

Recently released draft guidance on waters of the United States by the EPA and the U.S. Army Corps of Engineers also appear to dramatically expand the agencies' authority with regard to which waters and wetlands are considered "adjacent" to jurisdictional "waters of the United States" under the Clean Water Act. Many farm and ranch families are worried that this guidance could now force them to comply with the SPCC rule, with very little time to do so. Additionally, the delay of compliance assistance documentation has put farmers far behind the curve in preparing for compliance. Had the information and documentation been available before the January grower meetings, the compliance process could have begun before the time intensive growing season.

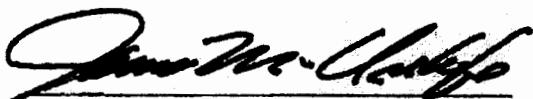
Furthermore, EPA still needs to clarify exactly who is responsible for holding and maintaining the plan, as many farms are operated by people who do not own the land. EPA also needs to clarify how it plans to enforce the rule.

The last thing we want is for confusion or an overly burdensome rule to disincentivize compliance. Many farmers do not keep their tanks full during the entire year, and we have already heard from associations whose members are considering decreasing the size of their tanks so they will not be subject to SPCC compliance. This could eliminate their ability to buy fuel in bulk, thus increasing their costs and the costs of food production.

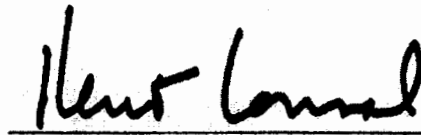
Small family farms have a natural incentive to prevent any possible oil spills on their property. No one wants more oil spills. In fact, the last people who want to spill oil are family farm owners. The impact of dealing with a costly clean-up could be devastating to the finances of a small farm.

We respectfully request that you re-consider the implementation deadline, continue to dialogue with the agricultural community to answer their questions, and ensure that the rule is not overly burdensome or confusing. We believe this will help avoid the rule's unintended consequences. We appreciate your attention to this important matter.

Sincerely,



James M. Inhofe
United States Senator



Kent Conrad
United States Senator



Lamar Alexander

Jim Johnson

John Barrasso

Ang Klobuchar

Ray Blend

May of Garrison

John Bozeman

Cine McCasill

~~John~~

to Benjamin Nelson

Sally Chavkin

Mark Royce

Thad Carter

John Cornyn

Mike Croy

Michael B. Eiji

L. H.

Chuck Grassley

John Hoven

John Hoven

Mike Johnson

Ray Johnson

Richard A. Leger

Jerry Moran

Lee Richardson

Joe E. Rish

Mark

John A. Leger

Dan Vitter



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

OCT 12 2011

The Honorable Marco Rubio
United States Senate
Washington, D.C. 20510

OFFICE OF
SOLID WASTE AND
EMERGENCY RESPONSE

Dear Senator Rubio:

Thank you for your letter of June 27, 2011, to the U.S. Environmental Protection Agency regarding the Spill Prevention, Control and Countermeasure (SPCC) rule. In your letter, you cited concerns with the implementation timeline for the SPCC rule for farmers and indicated that farmers need additional time to comply with the rule revisions. I understand your concerns and I appreciate the opportunity to share important information about assistance for the agricultural community.

By way of background, the SPCC rule has been in effect since 1974. The EPA revised the SPCC rule in 2002 and further tailored, streamlined and simplified the SPCC requirements in 2006, 2008 and 2009. During this time, the EPA extended the SPCC compliance date seven times to provide additional time for facility owner/operators to understand the amendments and to revise their Plans to be in compliance with the rule. The amendments applicable to farms, among other facilities, provided an exemption for pesticide application equipment and related mix containers, and clarification that farm nurse tanks are considered mobile refuelers subject to general secondary containment like airport and other mobile refuelers. In addition, the agency modified the definition of facility in the SPCC regulations, such that adjacent or non-adjacent parcels, either leased or owned by a person, including farmers, may be considered separate facilities for SPCC purposes. This is relevant because containers on separate parcels (that the farmer identifies as separate facilities based on how they are operated) do not need to be added together in determining whether they are subject to the SPCC requirements. Thus, if a farmer stores 1,320 US gallons of oil or less in aboveground containers or 42,000 US gallons or less in completely buried containers on separate parcels, they would not be subject to the SPCC requirements. (In determining which containers to consider in calculating the quantity of oil stored, the farmer only needs to count containers of oil that have a storage capacity of 55 US gallons and above.)

Your letter expresses concern about a lack of Professional Engineers (PE) available to certify SPCC Plans. However, most farmers do not need a PE to comply with the SPCC requirements. When the SPCC rule was originally promulgated in 1973, it required that every SPCC Plan be PE certified. However, the EPA amended the SPCC rule in 2006, and again in 2008, to create options to allow qualified facilities (i.e. those with aboveground oil storage capacities of 10,000 gallons or less and clean spill histories) to self-certify their Plans (no PE required) and, in some cases, complete a template that serves as the SPCC Plan for the facility. The SPCC rule requires that the owner or operator of the facility (in this case, a farm) prepare and implement an SPCC Plan. The Plan must be maintained at the location of the farm that is normally attended at least four hours per day. The EPA updated the Frequent Questions on the SPCC Agriculture webpage to include this clarification.

Additionally, during development of the SPCC amendments EPA and the U.S. Department of Agriculture (USDA) gathered information that indicated that approximately 95 percent of farms covered

by the SPCC requirements are likely to qualify to self-certify their Plan—that is, no PE certification. Farmers that require the use of a PE and have difficulty finding one before the compliance date may contact the EPA Regional Administrator for the region in which they are located and request a time extension to amend and prepare an SPCC Plan.

EPA understands the issues raised by the farm community and is currently evaluating the best approach to resolve the identified issues. We are working hard to explore viable options for addressing the concerns you have raised. At a minimum, as noted above, those farmers who cannot meet the November 10, 2011, compliance date may request an extension as provided for specifically under 40 CFR 112.3 (f), which states:

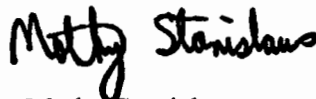
“ Extension of time: The Regional Administrator may authorize an extension of time for the preparation and full implementation of a Plan, or any amendment of a Plan thereto, beyond the time permitted for the preparation, implementation, or amendment of a Plan under this part, when he finds that the owner or operator of a facility subject to the section, cannot fully comply with the requirements as a result of either nonavailability of qualified personnel, or delays in construction or equipment delivery beyond the control and without the fault of such owner or operator or his agents or employees....”

Among the options we are exploring is an appropriate and expeditious process by which such an extension could be of value in addressing the legitimate concerns raised on behalf of agricultural producers.

The Frequent Questions on the EPA's SPCC for Agriculture webpage reflect this information to ensure that farmers are aware that an extension is possible and to describe the process to request such an extension. The address for that website is http://www.epa.gov/emergencies/content/spcc/spcc_ag.htm. We will continue to explore opportunities that would trigger approval of such exemption requests and will investigate mechanisms to help farmers request an extension.

Again, thank you for your letter. If you have further questions, please contact me or your staff may call Raquel Snyder, in EPA's Office of Congressional and Intergovernmental Relations, at (202) 564-9586. We also welcome your suggestions for additional outreach and compliance assistance approaches.

Sincerely,



Mathy Stanislaus
Assistant Administrator



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

0AR-14-000-5892

MAR 21 2014

OFFICE OF
AIR AND RADIATION

The Honorable Marco Rubio
United States Senate
Washington, D.C. 20510

Dear Senator Rubio:

On behalf of the U.S. Environmental Protection Agency, it is my pleasure to inform you that Florida Power & Light Company, located in Juno Beach, Florida, has been selected for a Clean Air Excellence Award for their project FPL's Clean Fleet and Consumer Education Program. We received almost 70 applications, and this project was chosen by the EPA's Office of Air and Radiation for its impact, innovation and replicability.

We would like to invite you to attend the 2014 Clean Air Excellence Awards Ceremony, which will be held on the evening of Wednesday, April 2, 2014, from 5:30 pm to 7:30 pm at the Crowne Plaza Hotel in Crystal City, Virginia. Along with others, I will be presenting the awards.

The Clean Air Excellence Awards Program recognizes and honors outstanding and innovative efforts to achieve cleaner air. The program was recommended to the EPA by the Clean Air Act Advisory Committee, which advises the EPA on policy issues related to the Clean Air Act.

We hope you will be able to join us in congratulating the winners from your state for their innovative projects that are helping us to achieve cleaner air. If you have any questions, please contact me or your staff may contact Jenny Craig of my staff at (202) 564-1674 or craig.jeneva@epa.gov.

Sincerely,

A handwritten signature in black ink, appearing to read "Janet G. McCabe".

Janet G. McCabe
Acting Assistant Administrator

14-001-4924

United States Senate
WASHINGTON, DC 20510

September 11, 2014

The Honorable Gina McCarthy
Administrator
Environmental Protection Agency
U.S. EPA Headquarters – William J. Clinton Building
1200 Pennsylvania Avenue, NW
Washington, DC 20460

Dear Administrator McCarthy,

We are writing to request that the Environmental Protection Agency (EPA) provide a 60 day extension of the comment period for the "Carbon Pollution Emission Guidelines for Existing Stationary Sources: Electric Generating Units." While we appreciate EPA granting an initial 120 day comment period, the complexity and magnitude of the proposed rule necessitates an extension. This extension is critical to ensure that state regulatory agencies and other stakeholders have adequate time to fully analyze and comment on the proposal. It is also important to note that the challenge is not only one of commenting on the complexity and sweeping scope of the rule, but also providing an opportunity to digest more than 600 supporting documents released by EPA in support of this proposal.

The proposed rule regulates or affects the generation, transmission, and use of electricity in every corner of this country. States and stakeholders must have time to fully analyze and assess the sweeping impacts that the proposal will have on our nation's energy system, including dispatch of generation and end-use energy efficiency. In light of the broad energy impacts of the proposed rule, state environmental agencies must coordinate their comments across multiple state agencies and stakeholders, including public utility commissions, regional transmission organizations, and transmission and reliability experts, just to name a few. The proposed rule requires a thorough evaluation of intra- and inter-state, regional, and in some cases international energy generation and transmission so that states and utilities can provide the most detailed assessments on how to meet the targets while maintaining reliability in the grid. This level of coordination to comment on an EPA rule is unprecedented, extraordinary, and extremely time consuming.

It is also important to note that the proposed rule imposes a heavy burden on the states during the rulemaking process. If the states want to adjust their statewide emission rate target assigned to them by EPA, they must provide their supporting documentation for the adjustment during the comment period. The EPA proposal provides no mechanism for adjusting the state emission rate targets once they are adopted based on the four building blocks. So the states need enough time to digest the rule, fully understand it, and then collect the data and justification on why their specific target may need to be adjusted, and why the assumptions of the building blocks may not apply to their states. This cannot be adequately accomplished in only 120 days.

Thank you for your consideration of this request.

Sincerely,





Joe Neukirchen

Mike McConell

Dan Allen

Joe Donnelly

Walter S. E.

Tom Allen

Jim Johnson

Pat Roberts

John Cornyn

John Boozman

John R. Neukirchen

748

Mary J. Garrison

Tru / L

Mark R. Warner

MARK ROYCE

Paul Manchillo

Chuck Grassley

Chris Hatch

Clara Kim

Roy Johnson

Rep. Winter

Carla Alexander

Mike Cregoo

Dan Coak

Joe E. Kirsch

Mike Johnson
Sally Chaudhri

Michael B. Eiji

Jerry Moran

Jeff Kerner

Jim McLaughlin

John McLean
Mike H.

Jimmy Dean

Tom Cohen

Mark Geyser
Ken Heller

Rob Portman

Joe Bannard
Paul Carter

John F. Felt

John Hovson

Richard Shelby

Bob Sumner

Kay Bent

Rand Paul

Jim S.

Larry Hsu

Pat Rooney



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

September 16, 2014

OFFICE OF
AIR AND RADIATION

The Honorable Marco Rubio
United States Senate
Washington, D.C. 20510

Dear Senator Rubio:

Thank you for your letter of September 11, 2014, to U.S. Environmental Protection Agency Administrator Gina McCarthy requesting an extension of the comment period for the proposed Clean Power Plan, which was signed on June 2, 2014, and published in the Federal Register on June 18, 2014. The Administrator asked that I respond on her behalf.

Before issuing this proposal, the EPA heard from more than 300 stakeholder groups from around the country, to learn more about what programs are already working to reduce carbon pollution. In addition, during the week of July 29, the EPA conducted eight full days of public hearings in four cities. Over 1,300 people shared their thoughts and ideas about the proposal and over 1,400 additional people attended those hearings.

These hearings and these meetings, with states, utilities, labor unions, nongovernmental organizations, consumer groups, industry, and others, reaffirmed that states are leading the way. The Clean Air Act provides the tools to build on these state actions in ways that will achieve meaningful reductions and recognizes that the way we generate power in this country is diverse and interconnected.

Recognizing that the proposal asks for comment on a range of issues, some of which are complex, the EPA initially proposed this rule with a 120-day comment period. The EPA has decided to extend the comment period by an additional 45 days, in order to get the best possible advice and data to inform a final rule.

The public comment period will now remain open until December 1, 2014. We encourage you and all interested parties to provide us with detailed comments on all aspects of the proposed rule. We have submitted your letter to the rulemaking docket, but additional comments can be submitted via any one of these methods:

Federal eRulemaking portal: <http://www.regulations.gov>. Follow the online instructions for submitting comments.

- E-mail: A-and-R-Docket@epa.gov. Include docket ID number HQ-OAR-2013-0602 in the subject line of the message.
- Fax: Fax your comments to: 202-566-9744. Include docket ID number HQ-OAR-2013-0602 on the cover page.

- Mail: Environmental Protection Agency, EPA Docket Center (EPA/DC), Mailcode 28221T, Attention Docket ID No. OAR-2013-0602, 1200 Pennsylvania Avenue, NW, Washington, DC 20460.
- Hand Delivery or Courier: Deliver your comments to: EPA Docket Center, Room 3334, 1301 Constitution Ave., NW, Washington, DC, 20460. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Again, thank you for your letter. If you have further questions, please contact me or your staff may contact Kevin Bailey in the EPA's Office of Congressional and Intergovernmental Relations at bailey.kevinj@epa.gov or at (202) 564-2998.

Sincerely,



Janet G. McCabe
Acting Assistant Administrator

United States Senate

WASHINGTON, DC 20510

11-000-2630

February 15, 2011

The Honorable Lisa Jackson
Administrator
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, NW
Washington, DC 20460

Dear Administrator Jackson:

As the 112th United States Congress commences, we write to share with you our continuing concern with the potential regulation of farm and rural dusts through your review of the National Ambient Air Quality Standards (NAAQS) for coarse particulate matter (PM10), or "dust." Proposals to lower the standard may not be significantly burdensome in urban areas, but will likely have significant effects on businesses and families in rural areas, many of which have a tough time meeting current standards.

Naturally occurring dust is a fact of life in rural America, and the creation of dust is unavoidable for the agriculture industry. Indeed, with the need to further increase food production to meet world food demands, regulations that will stifle the U.S. agriculture industry could result in the loss of productivity, an increase in food prices, and further stress our nation's rural economy.

Tilling soil, even through reduced tillage practices, often creates dust as farmers work to seed our nation's roughly 400 million acres of cropland. Likewise, harvesting crops with various farm equipment and preparing them for storage also creates dust.

Due to financial and other considerations, many roads in rural America are not paved, and dust is created when they are traversed by cars, trucks, tractors, and other vehicles. To potentially require local and county governments to pave or treat these roads to prevent dust creation could be tremendously burdensome for already cash-strapped budgets.

While we strongly support efforts to safeguard the wellbeing of Americans, most Americans would agree that common sense dictates that the federal government should not regulate dust creation in farm fields and on rural roads. Additionally, the scientific and technical evidence seems to agree. Given the ubiquitous nature of dust in agricultural settings and many rural environments, and the near impossible task of mitigating dust in most settings, we are hopeful that the EPA will give special consideration to the realities of farm and rural environments, including retaining the current standard.

Thank you for your consideration of this important matter.

Sincerely,

Dick Sugar

Jan Bond

Herb Conrad

Mike Johnson

Michael B. Eiji

Jeff Kresin

Jim Lohlf

James Lohlf

John Eisinger

John Boorman

Jerry Moran

John R. Lohlf

Dan Coats

Paul Calman

Rob Pantanen

Mark R

John Hovsen

Ray Bent

Mark Royce

Th W

Mike Crygo

John Barrasso

Jon Tustin

Cine McCasill

Jim Johnson

Al Franken

Ang Kluber

John Conyn

Ken Johnson

Pat Roberts

Clara Kim

Lyndisister

to Benjamin Nelson



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

APR 14 2011

OFFICE OF
AIR AND RADIATION

The Honorable Marco Rubio
United States Senate
Washington, D.C. 20510

Dear Senator Rubio:

Thank you for your letter of February 15, 2011, co-signed by 32 of your colleagues, expressing your concerns over the ongoing review of the National Ambient Air Quality Standards (NAAQS) for particulate matter (PM). The Administrator asked that I respond to your letter.

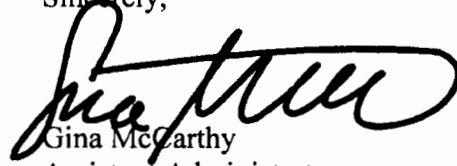
I appreciate the importance of NAAQS decisions to state and local governments, in particular to areas with agricultural communities, and I respect your perspectives and opinions. I also recognize the work that states have undertaken to improve air quality across the country. The NAAQS are set to protect public health from outdoor air pollution, and are not focused on any specific category of sources or any particular activity (including activities related to agriculture or rural roads). The NAAQS are based on consideration of the scientific evidence and technical information regarding health and welfare effects of the pollutants for which they are set.

No final decisions have been made on revising the PM NAAQS. In fact, we have not yet released a formal proposal. Currently, we continue to develop options, including the option of retaining the current 24-hour coarse PM standard. To facilitate a better understanding of the potential impacts of PM NAAQS standards on agricultural and rural communities, EPA recently held six roundtable discussions around the country. This is all part of the open and transparent rulemaking process that provides Americans with many opportunities to offer their comments and thoughts. Your comments will be fully considered as we proceed with our deliberations.

Under the Clean Air Act, decisions regarding the NAAQS must be based solely on an evaluation of the scientific evidence as it pertains to health and environmental effects. Thus, the Agency is prohibited from considering costs in setting the NAAQS. But cost can be - and is - considered in developing the control strategies to meet the standards (i.e., during the implementation phase). Furthermore, I want to assure you that EPA does appreciate the importance of the decisions on the PM NAAQS to agricultural communities. We remain committed to common sense approaches to improving air quality across the country without placing undue burden on agricultural and rural communities.

Again, the Administrator and I thank you for your letter. If you have further questions, please contact me or your staff may contact Josh Lewis in EPA's Office of Congressional and Intergovernmental Relations at (202) 564-2095.

Sincerely,

A handwritten signature in black ink, appearing to read "Gina McCarthy", with a large, sweeping flourish at the end.

Gina McCarthy
Assistant Administrator

MARCO RUBIO
FLORIDA

11-000-4997

CHARITIES
COMMERCE, SCIENCE AND
TRANSPORTATION

FOREIGN RELATIONS

SELECT COMMITTEE ON INTELLIGENCE

SMALL BUSINESS AND
ENTREPRENEURSHIP

United States Senate

WASHINGTON, DC 20510

March 30, 2011

The Honorable Lisa Jackson
United States Environmental Protection Agency
1200 Pennsylvania Ave., NW
Washington, DC 20004

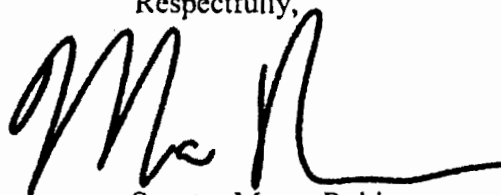
Dear Administrator Jackson:

It is my understanding that your agency is currently reviewing the labels for disinfectant and sanitizing products made by a Florida-based company, Zimek. On behalf of Zimek, I respectfully request that your agency conduct this review as expeditiously as possible.

According to Zimek, the company has been forced to lay-off 80 percent of their staff and forgo more than half a million dollars in the first quarter of 2011 due to the uncertainty of the Agency's action. To prevent further economic harm to both the company and the State of Florida, I appreciate your consideration of this request.

Thank you for your prompt attention to this important matter.

Respectfully,

A handwritten signature in black ink, appearing to read 'Marco Rubio', with a long horizontal flourish extending to the right.

Senator Marco Rubio



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

MAY 19 2011

OFFICE OF CHEMICAL SAFETY
AND POLLUTION PREVENTION

The Honorable Marco Rubio
United States Senate
Washington, D.C. 20510

Dear Senator Rubio:

Thank you for your letter of March 30, 2011, to U.S. Environmental Protection Agency (EPA) Administrator Lisa Jackson on behalf of the Florida-based company, Zimek. Your letter requests that EPA conduct an expedited review of Zimek's label amendment application. Your letter was forwarded to me for response on behalf of EPA because my office is responsible for regulating pesticides.

My staff in the Office of Pesticide Programs have met on two occasions with Zimek and its commercial partners, to ensure the companies have a clear understanding of what is required to be submitted to EPA to achieve registration of pesticide products that can be applied using its technology for the purposes of controlling public health pests. This effort, and an ongoing, open dialogue, will help ensure a quality application and timely review of applications associated with disinfection of ambulances and similar use sites using the Zimek technology. Our ability to process an application promptly and smoothly largely rests on the quality of the data provided by the applicant and the conformance of those data to applicable regulations and policies.

The Pesticide Registration Improvement Act (PRIA) sets forth statutory application fees and associated timeframes for the Agency to render a decision on an application. As part of the Agency process to amend the pesticide registration, Zimek, and/or the companies whose products they intend to apply using their technology, would need to demonstrate that the product is effective against the target microorganisms (or pathogens) when it is applied using their equipment. Moreover, use of a mister is a new means of application for this use site, and there is no existing protocol for this type of use. The test protocol is critical to ensure the data are good and that health and science decisions are sound. These steps are important because they allow the Agency to:


- Ensure that new protocols are reviewed by external experts as well as Agency scientists so that all scientific aspects of the protocol are fully vetted prior to approval.
- Determine the hazard and routes of potential human and environmental exposures by reviewing the scientific database.
- Determine whether the product will cause any unreasonable adverse effect on human health or the environment.
- Ensure that the product as applied is effective in controlling public health pathogens in order to protect human health.

- Ensure that efficacy data generated as part of the registration process are based on a scientifically sound test protocol.

Protocol approval can typically take up to 12 months and is followed by testing using the approved protocol, data submission, and a new use application – for which PRIA allows up to another 9 months for review. Recently, a commercial partner of Zimek took the first step in the process described above by submitting a protocol to the Agency for review. We have identified this as a high priority and, as such, are expediting our review accordingly. Once the review is complete, the results will be shared with the submitter and our dialogue will continue as to what steps will need to be taken to advance the process further. EPA is committed to expediting the review of registration applications related to Zimek technology as they are submitted.

Again, thank you for your letter. If you have further questions, please contact me, or your staff may call Mr. Sven-Erik Kaiser in EPA's Office of Congressional and Intergovernmental Relations at (202) 566-2753.

Sincerely,



Stephen A. Owens
Assistant Administrator

MARCO RUBIO
FLORIDA

12-000-9054

COMMITTEES:

COMMERCE, SCIENCE, AND
TRANSPORTATION

FOREIGN RELATIONS

SELECT COMMITTEE ON INTELLIGENCE

SMALL BUSINESS AND
ENTREPRENEURSHIP

United States Senate

WASHINGTON, DC 20510

May 21, 2012

Mr. David McIntosh
Associate Administrator for Congressional and Intergovernmental Relations
Environmental Protection Agency
1200 Pennsylvania Avenue NW, Room 3426 ARN
Washington, DC 20460-0003

Dear Mr. McIntosh,

Enclosed you will find correspondence from my constituent, Mr. *EX-14*
regarding the application filed by Med Safe Solutions US, Inc. requesting its
reclassification as an on-site eliminator of narcotics-based pharmaceutical waste. Please
review this matter and report back to me.

If you require additional information, contact Mercedes Ayala on my staff at
(407) 318-2735. You may forward your response to my office at 201 South Orange
Avenue, Suite 350, Orlando, FL 32801. The fax number is (407) 423-0941. Thank you
for your assistance.

Sincerely,



Marco Rubio
United States Senator

MR/ma

Enclosure



Office of U.S. Senator Marco Rubio Privacy Act Consent Form

In accordance with the provisions of The Privacy Act of 1974 (Public Law 93-579), your expressed written consent is required prior to contacting a federal agency on your behalf. Since e-mails do not contain a valid signature, they do not fulfill the requirements of the Privacy Act. If you are inquiring on behalf of another person age 18 or older, it is necessary that he or she sign this document. All information must be written in English. Items marked with an asterisk (*) are required.

* Title: (select one) ☒ Mr. ☐ Ms. ☐ Mrs. ☐ Mr. & Mrs. ☐ Rev. ☐ Doctor ☐ Other: _____

* Name: EX-6 * Date of Birth: EX-6

* Address: EX-6 * City: ALVA * State: FL

* County: Lee * Zip code: 33920 * Home Phone: _____

Work Phone: EX-6 * Mobile Phone: EX-6 Fax: (_____)

E-mail Address: EX-6

Issue: (select one) ☐ Immigration ☐ Veterans ☐ Social Security ☐ Other: LEPA

If you have contacted another congressional office to assist you, please list the office:

Name of Office Contacted: Senator Bill Nelson, Congressman Connie Mack

Please Complete the Sections That Apply to Your Case:

Alien Number: _____ Military Rank and Unit: _____

Type of Application Filed: _____ Claim/Receipt Number: _____

(Ex: N-400, I-130, SSI, SSD, EEOC, CMS-855)

Social Security Number: EX-6

* Briefly describe the nature of your problem and what outcome would you like from this inquiry:

See attached

I have discussed my concerns with Senator Marco Rubio and/or his representative(s), and request that any relevant information that is required to assist in responding to my inquiry may be furnished upon request.

☐ Yes, I would like to receive Marco Rubio's electronic newsletter.

* Signature: EX-6 * Date: 5/5/12

Please mail or fax completed form to:
U.S. Senator Marco Rubio
201 S. Orange Avenue, Suite 350
Orlando, Florida 32801
Fax: (407) 423-0941

If you have any questions or comments, please call us at (407) 254-2573 or toll-free in Florida (866) 630-7106

May 11, 2012

U.S Senator Marco Rubio,
201 S. Orange Avenue
Suite 350
Orlando, FL 32801

Dear Senator Rubio,

By way of introduction my name is *Gy. Le* and I am a native Floridian and have been a citizen of Florida for 60 years. Additionally, I am a shareholder in Medsafe Solutions, Inc., a Florida corporation. The purpose of this letter is to address regulatory hurdles and inconsistencies that Medsafe is currently facing.

The singular reason Medsafe Solutions was formed was to explore and find a viable solution to eliminate the continuing introduction of narcotics-based pharmaceutical waste into our water supply. There have been a large number of studies, research efforts and white papers documenting the fact that traces of numerous narcotics are present in nearly every source of water in the U.S., both potable and non-potable sources. These studies include a seven-year study performed by the Environmental Protection Agency (EPA) and their results are consistent with all of the other test results. These facts can be quickly supported and documented via the internet.

These narcotic compounds are not water soluble and, therefore, water treatment plants are unable to remove them. They never completely go away; the only way to keep them out of the water supply is to destroy them before they have a chance to get in the water supply. The EPA estimates that hospitals, nursing homes, veterinarians, hospice organizations, and clinics "sewage" (i.e. -flush) over 300 million pounds of these narcotic compounds every year into the water supply of the U.S. Obviously this is a very big and very serious ongoing problem, only to get bigger as the population ages and more prescriptions are written.

Medsafe Solutions was formed to address this specific problem. We have spent considerable time and money and have worked for years with the EPA, DEA, DOT and Florida DEP to get them to understand our unique and practical approach and through a great deal of persistence and a thorough review process, we were finally successful in Medsafe obtaining the first-ever permit issued by the FDEP, specifically targeted for the on-site destruction of narcotics-based pharmaceutical waste.

Because Federal law prohibits the transport of controlled substances (narcotics-based waste), simply stated, our approach is the use of a mobile burner that completely destroys these wastes through introduction to temperatures of up to 2,000 degrees Fahrenheit. It is this solution that was permitted by the EPA. In essence, the mobility allows us to perform the destruction without an adverse impact on the environment, while operating on-site without the waste ever having to be transported. In fact, the main reason the FDEP was enthusiastic about our solution was that the destruction process would occur at multiple sites for short periods of time, typically less than two hours.

Our problem now is that the conditions contained in the permit mirror the emissions testing requirements of a fixed-site municipal incinerator that burns 24/7. As you can imagine, a municipal incinerator burns virtually all types of materials generated by a community including plastics, rubber and metals. The only material that will be burned in our device is narcotics-based waste.

Fixed-site incinerators, understandably, must be tested for emissions for the material they burn such as dioxins & furans produced by plastic and emission tests for lead, cadmium, carbon dioxide, nitrogen oxides and mercury among others. As you can imagine, testing for all of these emissions is prohibitively expensive for a small private company. Our problem is that these specific emission tests do not apply to our unit as we do not burn the same materials as a fixed-site municipal incinerator and, therefore, do not produce these emissions. We are happy to test our device but not for emissions that narcotics-based waste does not produce. While we genuinely appreciate the support the EPA and other regulatory agencies have provided to this point, it is cost prohibitive to move forward being held to the same test criteria as a fixed-base municipal incinerator. Furthermore, the EPA's stance is that every single device purchased, despite the fact they are identical, must be tested when purchased and annually thereafter. This is a hurdle we cannot clear.

Despite the fact that the EPA is the guardian of our nations water supply and, by their own admission, is seriously concerned about the alarming presence of "pharmaceuticals" in our water supply they cannot see their way clear to exempt us from these tests or classify us as something other than an incinerator. The irony here is that EPA's air quality standards are in conflict with their water quality standards.

Everybody in Government talks about the need for jobs. We are attempting to start a business that has the potential to employ many people and will produce significant health benefits for all citizens by safeguarding our nation's potable water supply. If our political leaders, including the President, are serious about their remarks in desiring to produce "green" industry jobs then Medsafe Solutions is the "greenest company you never heard of".

We need your help! We need you to intercede with the EPA on our behalf and get them to reclassify us, or exempt us from the unnecessary testing requirements, or require just those tests that apply to what we are permitted to burn (i.e.-narcotic-based pharmaceutical waste).

In closing, we would like to bring to your attention that the Food & Drug Administration (FDA) still considers "sewaging" narcotics-based waste pharmaceuticals an acceptable practice and the EPA has only recently changed "sewaging" from a "best practice" to a "discouraged practice" although still allowed. That this practice continues is deeply distressing when there is existing authority in the Clean Water Act to stop this completely and immediately.

Your expeditious attention to these matters would be greatly appreciated. I look forward to hearing positive news from you in the very near future.

Very Truly Yours,

Ex. 6

Dear Senator Rubio,

For your information we hit the wall with this situation
in the person of Ms. Charlene Spells

EPA's Office of air quality Planning and standards
Sector Policies and Programs Division
Natural Resources and Commerce Group
109 T.W. Alexander Drive
Research Triangle Park, NC 27709
Mail code E143-03
(919)541-5255
E-Mail spells.charlene@epa.gov



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

JUN 26 2012

OFFICE OF
AIR AND RADIATION

The Honorable Marco Rubio
United States Senate
201 South Orange Avenue
Suite 350
Orlando, Florida 32801

Dear Senator Rubio:

Thank you for your letter of May 21, 2012, on behalf of your constituent, Mr. *Gyle*, who is a shareholder in Medsafe Solutions, Inc. I understand from Mr. *Gyle*'s letter that he has requested relief from testing requirements for a portable incinerator which will be used to burn narcotics-based pharmaceutical waste.

As you may know, we are required under the Clean Air Act (CAA) to establish emissions standards for units that burn solid waste. The term "solid waste" has the meaning established by the Administrator under the Resource Conservation and Recovery Act and includes discarded medications.

The CAA requires the U.S. Environmental Protection Agency to establish emissions standards for different types of solid waste incineration units, including "other solid waste incineration" (OSWI) units. The EPA's current OSWI regulations include emissions standards for very small municipal waste combustion units and institutional waste incineration units. The unit described by Mr. *Gyle* has been permitted by the state of Florida as an OSWI unit. The regulations which apply to OSWI units are found in 40 C.F.R. part 60 subpart EEEE and the specific requirements for initial and annual performance testing are found in section 60.4922.

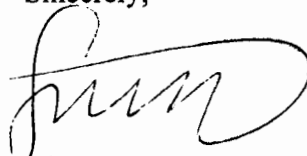
The OSWI rule provides for relief from performance testing under the performance test waiver in the General Provisions, which apply to regulations codified under 40 C.F.R. part 60. Specifically, section 60.8(b) allows for a waiver of a performance test where "the owner or operator of a source has demonstrated by other means to the Administrator's satisfaction that the affected facility is in compliance with the standard." Additional guidance on the application of the performance test waiver may be found in the April 27, 2009, "Clean Air Act National Stack Testing Guidance."

Waivers for stack testing are granted only if the owner or operator of a source has demonstrated by other means that the source is in compliance with the applicable standard. In the "Clean Air Act National Stack Testing Guidance" document, we describe certain criteria which will be used to evaluate and approve waivers from performance testing. Medsafe is welcome to submit a request for a waiver if they believe that they can meet the criteria and demonstrate by other means the source is in compliance with the standard. That request must be made in writing to U.S. EPA Region IV. The agency can then evaluate Medsafe's demonstration and determine if a waiver is warranted.

Finally, the rule also allows for relief from annual performance testing to testing every two or three years, if certain prior performance test criteria are met. Please see section 60.4934.

Again, thank you for your letter. If you have further questions, please contact me or your staff may call Cheryl Mackay in the EPA's Office of Congressional and Intergovernmental Relations at (202) 564-2023.

Sincerely,

A handwritten signature in black ink, appearing to read "Gina McCarthy", with a large, sweeping loop at the end.

Gina McCarthy
Assistant Administrator

12-001-0775

Congress of the United States
Washington, DC 20515

June 21, 2012

The Honorable Lisa Jackson
Administrator
United States Environmental Protection Agency
1200 Pennsylvania Avenue, NW
Washington, DC 20450

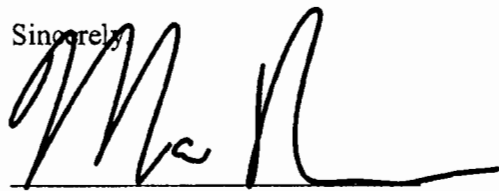
Dear Administrator Jackson:

As members of the Florida Congressional Delegation, we write to respectfully request your formal review and approval of the Florida Department of Environmental Protection's (FDEP) numeric nutrient criteria rules in their entirety. In regards to EPA's response on April 18, 2012 to our March 5, 2012 letter, we are pleased to inform you that the recent ruling on June 7 by Administrative Law Judge Bram D. E. Canter upheld FDEP's numeric nutrient standard rules, which now have been officially adopted.

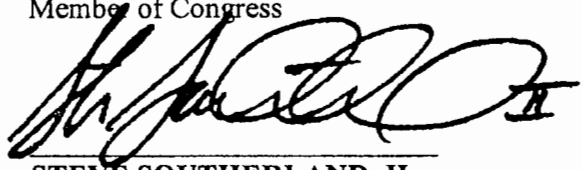
The State of Florida has committed significant time, energy, and resources over the past several years studying and collecting data regarding nutrients, which has resulted in these high standards based on sound scientific evidence. We share the mutual interest in ensuring that Florida's unique and critical bodies are protected against nutrient pollution, and we are confident these rules, which have the full support of the Florida legislature, members of the Cabinet, and now the court, will do just that without imposing an unwarranted economic burden on Floridians. We believe that these FDEP rules obviate any need for federal numeric nutrient criteria rulemakings in our state.

We applaud FDEP's dedication to improve our state's water quality and appreciate EPA's efforts in working with FDEP during the review process. While we understand that EPA scientists have already confirmed that FDEP's rules are accurate, we look forward to your support, final approval, and your withdrawal of the January 2009 determination that Florida needs federal numeric nutrient criteria.

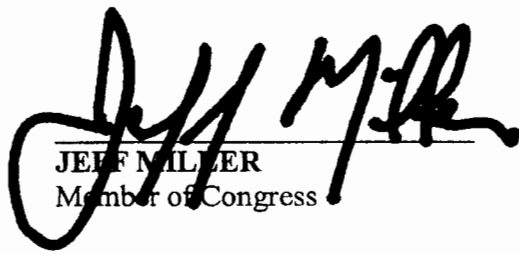
Sincerely,



MARCO RUBIO
Member of Congress



STEVE SOUTHERLAND, II
Member of Congress



JEFF MILLER
Member of Congress



CORRINE BROWN
Member of Congress



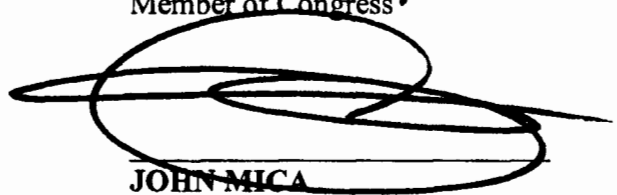
ANDER CRENSHAW
Member of Congress



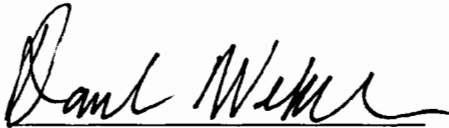
RICHARD B. NUGENT
Member of Congress



CLIFF STEARNS
Member of Congress



JOHN MICA
Member of Congress



DANIEL WEBSTER
Member of Congress



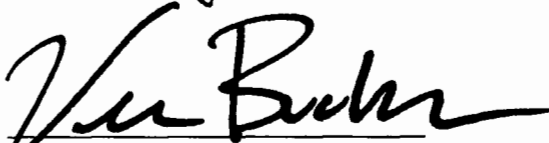
GUS M. BILIRAKIS
Member of Congress



C. W. BILL YOUNG
Member of Congress



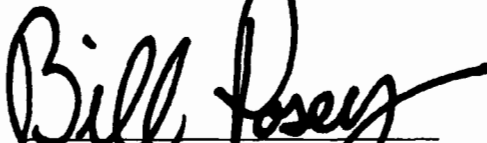
DENNIS A. ROSS
Member of Congress



VERN BUCHANAN
Member of Congress



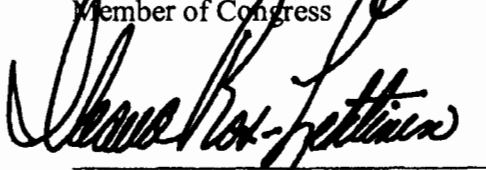
CONNIE MACK
Member of Congress



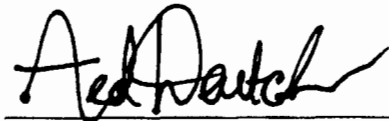
BILL POSEY
Member of Congress



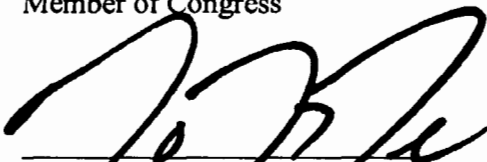
THOMAS J. ROONEY
Member of Congress



ILEANA ROS-LEHTINEN
Member of Congress




TED DEUTCH
Member of Congress



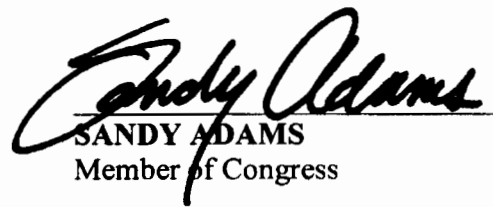
MARIO DIAZ-BALART
Member of Congress



ALLEN B. WEST
Member of Congress



ALCEE L. HASTINGS
Member of Congress



SANDY ADAMS
Member of Congress



DAVID RIVERA
Member of Congress



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

JUL 25 2012

OFFICE OF WATER

The Honorable Marco Rubio
United States Senate
Washington, D.C. 20510

Dear Senator Rubio:

Thank you for your letter of June 21, 2012, to the U.S. Environmental Protection Agency (EPA) Administrator Lisa P. Jackson, requesting formal review and approval of the Florida Department of Environmental Protection (FDEP) numeric nutrient criteria rule.

The EPA appreciates that the State of Florida has committed significant time, energy, and resources in collecting and analyzing nutrient data and formulating this rule. Having formally received FDEP's numeric nutrient rules on June 13th, the EPA is in the process of evaluating the rule for its scientific defensibility and protectiveness of the state's waterways, as prescribed by the Clean Water Act and the EPA's 2009 determination that Florida needs numeric nutrient criteria.

Again, thank you for your letter. If you have further questions, please contact me or your staff may call Denis Borum in the EPA's Office of Congressional and Intergovernmental Relations at 202-564-4836.

Sincerely,

A handwritten signature in black ink, appearing to read "Nancy K. Stoner", is positioned above the typed name.

Nancy K. Stoner
Acting Assistant Administrator

14-061-0101

Eades, Cassaundra

From: Lewis, Josh
Sent: Tuesday, May 27, 2014 1:09 PM
To: Eades, Cassaundra; Mims, Kathy
Cc: Bailey, KevinJ
Subject: FW: letter to Admin.
Attachments: 14.05.22 - GHG rule.pdf

For CMS

From: Vaught, Laura
Sent: Friday, May 23, 2014 6:16 PM
To: Lewis, Josh; Distefano, Nichole
Subject: FW: letter to Admin.

New letter.

From: Decker, Sara (Commerce) [mailto:Sara_Decker@commerce.senate.gov]
Sent: Thursday, May 22, 2014 4:48 PM
To: Vaught, Laura
Subject: letter to Admin.

Hi Laura –

Attached, please find a letter spearheaded by Senator Rubio to Administrator McCarthy regarding the anticipated proposed rule on greenhouse gas emissions for existing power plants. A hard copy is in the mail. Please let me know if you have any questions.

S.

Sara E. Decker
Professional Staff Member
Office of Senator Marco Rubio
Subcommittee on Oceans, Atmosphere,
Fisheries and Coast Guard
(202) 224-3041

United States Senate

WASHINGTON, DC 20510

May 22, 2014

The Honorable Gina McCarthy
Administrator
Environmental Protection Agency
1200 Pennsylvania Avenue, NW
Washington, DC 20460

Dear Administrator McCarthy:

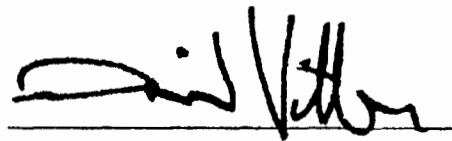
It is our understanding that the Environmental Protection Agency (EPA) will be moving forward with a draft proposal to regulate greenhouse gases from existing power plants as soon as June 1st. Given the controversy and ongoing debate regarding the costs and benefits of this proposed regulation, we are respectfully writing that you do not move forward with the draft proposal at this time.

Energy that is cost-effective and drawn from diverse resources is indisputably a positive input to any economically prosperous society. In the United States, we have benefited from a diverse and abundant energy supply, one that includes coal and natural gas as well as nuclear and renewable energy. We have also prospered as a country because the costs of this energy have remained low, allowing businesses and families to use their income not to pay high electricity bills but to invest in their company or pay for college tuition. Unfortunately, while the overall benefits of any draft proposal are questionable, the economic and social costs of further regulating our electricity industry will undoubtedly increase costs for consumers and businesses. According to some estimates, such a proposal on existing power plants, when combined with other regulations already being put forth by the Administration, could cost 600,000 jobs and an aggregate decrease in gross domestic product by \$2.23 trillion. Even more notably, it could cost a family of four more than \$1,200 per year.

As public officials, we have a duty to weigh the costs of any policy, whether legislative or administrative, against the expected benefits. Unfortunately, we do not see a proper balance on the EPA's decision to move forward on regulating greenhouse gases from existing power plants and, for this reason, ask that you do not move forward with the draft proposal at this time.

Thank you for your consideration of our request.

Respectfully,



7-28

Mike Enzi

Jeff Felt

Tom Colman



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

AUG 28 2014

OFFICE OF
AIR AND RADIATION

The Honorable Marco Rubio
United States Senate
Washington, D.C. 20510

Dear Senator Rubio:

Thank you for your letter of May 22, 2014, to U.S. Environmental Protection Agency Administrator Gina McCarthy on the Clean Power Plan for Existing Power Plants, which was signed on June 2, 2014. The Administrator asked that I respond on her behalf.

Climate change induced by human activities is one of the greatest challenges of our time. It already threatens human health and welfare and our economic well-being, and if left unchecked, it will have devastating impacts on the United States and the planet. Power plants are the largest source of carbon dioxide emissions in the United States, accounting for roughly one-third of all domestic greenhouse gas emissions.

The Clean Power Plan aims to cut energy waste and leverage cleaner energy sources by doing two things. First, it uses a national framework to set achievable state-specific goals to cut carbon pollution per megawatt hour of electricity generated. Second, it empowers the states to chart their own paths to meet their goals. The proposal builds on what states, cities and businesses around the country are already doing to reduce carbon pollution, and when fully implemented in 2030, carbon emissions will be reduced by approximately 30 percent from the power sector across the United States when compared with 2005 levels. In addition, we estimate the proposal will cut the pollution that causes smog and soot by 25 percent, avoiding up to 100,000 asthma attacks and 2,100 heart attacks by 2020.

Before issuing this proposal, the EPA heard from more than 300 stakeholder groups from around the country to learn more about what programs are already working to reduce carbon pollution. These meetings, with states, utilities, labor unions, nongovernmental organizations, consumer groups, industry, and others, reaffirmed that states are leading the way. The Clean Air Act provides the tools to build on these state actions in ways that will achieve meaningful reductions and recognizes that the way we generate power in this country is diverse, complex and interconnected.

We appreciate you providing your views about the effects of the proposal. As you know, we are currently seeking public comment on the proposal, and we encourage you and all interested parties to provide us with detailed comments on all aspects of the proposed rule including costs and benefits. The public comment period will remain open for 120 days, until October 16, 2014. We have submitted your letter to the rulemaking docket, but you can submit additional comments via any one of these methods:

- Federal eRulemaking portal: <http://www.regulations.gov>. Follow the online instructions for submitting comments.
- E-mail: A-and-R-Docket@epa.gov. Include docket ID number HQ-OAR-2013-0602 in the subject line of the message.
- Fax: Fax your comments to: 202-566-9744. Include docket ID number HQ-OAR-2013-0602 on the cover page.
- Mail: Environmental Protection Agency, EPA Docket Center (EPA/DC), Mailcode 28221T, Attention Docket ID No. OAR-2013-0602, 1200 Pennsylvania Avenue, NW, Washington, DC 20460.
- Hand Delivery or Courier: Deliver your comments to: EPA Docket Center, Room 3334, 1301 Constitution Ave., NW, Washington, DC, 20460. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Again, thank you for your letter. If you have further questions, please contact me or your staff may contact Josh Lewis in the EPA's Office of Congressional and Intergovernmental Relations at Lewis.josh@epa.gov or at (202) 564-2095.

Sincerely,



Janet G. McCabe
Acting Assistant Administrator